

Exhibit D

Page 1

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 - x

4 In the Matter of:

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6 PURDUE PHARMA L.P., ET AL.

Case No. 19-23649-rdd

7

8 Debtors.

9 - x

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12 U.S. Bankruptcy Court

13 300 Quarropas Street

14 White Plains, New York 10601

15

16 November 19, 2019

17 10:31 AM

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22 B E F O R E :

23 HON ROBERT D. DRAIN

24 U.S. BANKRUPTCY JUDGE

25 ECRO: NAROTAM RAI

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1 Notice of Agenda for November 19, 2019 Hearing

2

3 Motion of Debtors for Entry of an Order (I) Authorizing the
4 Rejection of Commercial Lease and (II) Granting Related
5 Relief filed by Eli J. Vonnegut on behalf of Purdue Pharma
6 L.P. (ECF 435)

7

8 Motion of Debtors for Authority to Employ Professionals Used
9 in the Ordinary Course of Business Nunc Pro Tune to the
10 Petition Date filed by Eli J. Vonnegut on behalf of Purdue
11 Pharma L.P. (ECF 128)

12

13 Debtors' Motion Establishing Procedures for Interim
14 Compensation and Reimbursement of Expenses for Retained
15 Professionals filed by Eli J. Vonnegut on behalf of Purdue
16 Pharma L.P. (ECF 434)

17

18 Application of Debtors for Authority to Retain and Employ
19 Dechert LLP as Special Counsel to the Debtors Nunc Pro Tune
20 to the Petition Date filed by Eli J. Vonnegut on behalf of
21 Purdue Pharma L.P. (ECF 424)

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1 Application of Debtors for Authority to Retain and Employ
2 King & Spalding LLP as Special Counsel to the Debtors Nunc
3 Pro Tune to the Petition Date filed by Eli J. Vonnegut on
4 behalf of Purdue Pharma L.P. (ECF 427)

5

6 Debtors' Application for Authority to Retain and Employ
7 AlixPartners, LLP as Financial Advisor Nunc Pro Tune to the
8 Petition Date filed by Eli J. Vonnegut on behalf of Purdue
9 Pharma L.P. (ECF 429)

10

11 Debtors' Application for an Order Authorizing Employment and
12 Retention of Prime Clerk LLC as Administrative Advisor Nunc
13 Pro Tune to the Petition Date filed by Eli J. Vonnegut on
14 behalf of Purdue Pharma L.P. (ECF 439)

15

16 Application of the Official Committee of Unsecured Creditors
17 of Purdue Pharma L.P., et al. to Retain and Employ Akin Gump
18 Strauss Hauer & Feld LLP as Counsel, Nunc Pro Tune to
19 September 26, 2019 filed by Ira S. Dizengoff on behalf of
20 The Official Committee of Unsecured Creditors of Purdue
21 Pharma L.P., et al. (ECF 421)

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1 Application of the Official Committee of Unsecured Creditors
2 for Entry of an Order Authorizing Retention and Employment
3 of Bayard, P.A. as Efficiency Counsel to the Official
4 Committee of Unsecured Creditors, Nunc Pro Tune to September
5 29, 2019 filed by Ira S. Dizengoff on behalf of The Official
6 Committee of Unsecured Creditors of Purdue Pharma L.P., et
7 al. (ECF 422)

8

9 Application of the Official Committee of Unsecured Creditors
10 of Purdue Pharma L.P., et al. to Retain and Employ Province,
11 Inc. as Financial Advisor Nunc Pro Tune to October 1, 2019
12 filed by Ira S. Dizengoff on behalf of The Official
13 Committee of Unsecured Creditors of Purdue Pharma L.P., et
14 al. (ECF 423)

15

16 Application for Order Authorizing Employment and Retention
17 of Jefferies LLC as Investment Banker to the Official
18 Committee of Unsecured Creditors Nunc Pro Tune to October 4,
19 2019 filed by Ira S. Dizengoff on behalf of The Official
20 Committee of Unsecured Creditors of Purdue Pharma L.R., et
21 al. (ECF 425)

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1 Application of the Official Committee of Unsecured Creditors
2 of Purdue Pharma L.P., et al. to Retain and Employ Kurtzman
3 Carson Consultants LLC as Information Agent, Nunc Pro Tune
4 to November 1, 2019 filed by Ira S. Dizengoff on behalf of
5 The Official Committee of Unsecured Creditors of Purdue
6 Pharma L.R, et al. (ECF 426)

7

8 Motion of the Official Committee of Unsecured Creditors of
9 Purdue Pharma L.R, et al. for Entry of an Order Clarifying
10 the Requirement to Provide Access to Confidential or
11 Privileged Information and Approving a Protocol Regarding
12 Creditor Requests for Information filed by Ira S. Dizengoff
13 on behalf of The Official Committee of Unsecured Creditors
14 of Purdue Pharma L.R, et al. (ECF 415)

15

16 Motion of Debtors for Entry of Interim and Final Orders
17 Authorizing (I) Debtors to Continue to Use Existing Cash
18 Management Systems and Maintain Existing Bank Accounts and
19 Business Forms and (II) Financial Institutions to Honor and
20 Process Related Checks and Transfers filed by Eli J.
21 Vonnegut on behalf of Purdue Pharma L.R (ECF 5)

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1 Application of Debtors for Authority to Employ and Retain
2 Davis Polk & Wardwell LLP as Attorneys for the Debtors Nunc
3 Pro Tune to the Petition Date filed by Eli J. Vonnegut on
4 behalf of Purdue Pharma L.R (ECF 419)

5

6 Application of Debtors for Authority to Retain and Employ
7 Skadden, Arps, Slate, Meagher & Flom LLP as Special Counsel
8 to the Debtors Nunc Pro Tune to the Petition Date filed by
9 Eli J. Vonnegut on behalf of Purdue Pharma L.R (ECF 438)

10

11 Application of Debtors for Authority to Retain and Employ
12 Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel
13 to the Debtors Nunc Pro Tune to the Petition Date filed by
14 Eli J. Vonnegut on behalf of Purdue Pharma L.R (ECF 427)

15

16 Motion to Assume the Prepetition Reimbursement Agreement
17 with Ad Hoc Committee, and to Pay the Fees and Expenses of
18 the Ad Hoc Committee's Professionals filed by Eli J.
19 Vonnegut on behalf of Purdue Pharma L.P. (ECF 394)

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1 Motion of Debtors for Entry of an Order Authorizing (I)
2 Debtors to (A) Pay PrePetition Wages, Salaries, Employee
3 Benefits and Other Compensation and (B) Maintain Employee
4 Benefits Programs and Pay Related Administrative
5 Obligations, (II) Employees and Retirees to Proceed with
6 Outstanding Workers' Compensation Claims and (III) Financial
7 Institutions to Honor and Process Related Checks and
8 Transfers filed by Eli J. Vonnegut on behalf of Purdue
9 Pharma L.P. (ECF 6)

10

11 Debtors' Application for Authority to Employ PIT Partners LP
12 as Investment Banker Nunc Pro Tune to the Petition Date
13 filed by Eli J. Vonnegut on behalf of Purdue Pharma L.P.
14 (ECF 430)

15

16 Debtors' Application to Employ Ernst & Young as its Auditor,
17 Nunc Pro Tune to the Petition Date filed by Eli J. Vonnegut
18 on behalf of Purdue Pharma L.P. (ECF 432)

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25 Transcribed by: Sherri L. Breach & Penny Skaw

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13 AKIN, GUMP, STRAUSS, HAUER & FELD

14 Attorneys for Official Creditors' Committee

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18 ARIK PREIS, ESQ.

19 SARA BRAUNER, ESQ.

20 MITCHELL HURLEY, ESQ.

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22 BAYARD, P.A.

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25 BY: JUSTIN ALBERTO, ESQ.

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1 MARTZELL BICKFORD & CENTOLA

2 Attorneys for NAS Ad Hoc Committee

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1 P R O C E E D I N G S

2 THE CLERK: Please be seated,

3 THE COURT: Good morning. In re: Purdue Pharma
4 L.P., et al.

5 And before we start, let me apologize for the
6 delay. They were apparently impaneling a grand jury today,
7 so there was a long line before everyone present added to
8 the line, which delayed the security process.

9 Okay. So I have the amended agenda.

10 MR. HUEBNER: I'm going to say that. Your Honor,
11 Mr. Preis asked to address two things quickly which I, of
12 course, acceded to.

13 THE COURT: Okay.

14 MR. PREIS: Okay. Good morning, Your Honor. Arik
15 Preis from Akin, Gump, Strauss, Hauer & Feld on behalf of
16 the creditors' committee. I just wanted to address two
17 things because you will quickly understand why I want to do
18 this before the hearing starts.

19 Late on -- when we submitted our response to the
20 motion to assume the reimbursement agreement, we had
21 indicated that the State of Maryland was added as an ex
22 officio member to our creditors' committee. That was true
23 at the time. They had accepted.

24 As of Saturday night, they have decided to
25 withdraw.

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1 THE COURT: Okay.

2 MR. PREIS: I didn't want to file something on the
3 docket and then have -- then have some sort of colloquy in
4 front of the judge where Maryland had to respond.

5 I actually -- I know that they were outside. They
6 actually may not be in the room yet. But I didn't want
7 there to be any confusion today in case it came up --

8 THE COURT: Okay.

9 MR. PREIS: But we did not have a chance to file
10 something on the docket taking that off. Okay.

11 THE COURT: That's fine.

12 MR. PREIS: The second thing, just very quickly,
13 Your Honor, one of our creditor committee individual members
14 is here today, Ms. Cheryl Shulayer (ph). She just wanted to
15 -- we just wanted to introduce her.

16 THE COURT: Okay.

17 MR. PREIS: That's all.

18 THE COURT: Good morning.

19 MR. PREIS: Thank you.

20 MR. HUEBNER: Good morning, Your Honor. May it
21 please the Court, Marshall Huebner, of the law firm of Davis
22 Polk & Wardwell, here on behalf of the debtors.

23 Your Honor, let me begin with a piece of good
24 news, which is actually not apparent on the docket, but an
25 email should be on its way to chambers almost literally as

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1 we speak, which is we have actually reached agreement with
2 all parties on the form of injunction order.

3 Your Honor, may remember I described a double exit
4 ramp where on two dates, on December 19th and February 21st,
5 the dissenting states as it were could choose to flip from
6 being voluntarily bound to the terms of the injunction to
7 being involuntarily bound and, thereby, triggering an appeal
8 right.

9 THE COURT: Right.

10 MR. HUEBNER: The mechanic that actually, I and I
11 think Ms. Finer (ph) as well described on the docket to you
12 last week ended up working just fine. It took us a few days
13 to get the language right because, you know, everyone likes
14 their own drafting. But that is now done done and it is on
15 the way into court.

16 And I don't want to let that actually go too
17 quickly because I think it is worth noting for a moment that
18 the fact that with the exception of the two counties -- Your
19 Honor may remember there was one very specific lawsuit, but
20 I think we were all quite surprised when someone stood up
21 out of the blue having not spoken at all at the earlier
22 hearing and made a big speech.

23 With that one exception, which I think is a very
24 small exception, the fact that essentially now every state
25 in the union that potentially has police powers that they

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1 alleged might be exempt from the automatic stay has
2 voluntarily consented to an injunction that may go as long
3 as April 8th. But at a minimum will go at least as long
4 voluntarily until either December 19th or February 21st.
5 It's just a tremendous accomplishment and not a place that I
6 thought that we would be.

7 And so, you know, I know that, you know, we
8 promised you on the opening day of the case, as we feel very
9 passionate about, that we worked day and night and night and
10 day to settle everything that we possibly can. I am
11 obviously not unaware that we have two smaller contested
12 matters and one large contested matter on for today, but I
13 also don't want that to mask the tremendous underlying
14 progress that (indiscernible) made on issues large and
15 small. There is a lot going on behind the scenes with many
16 of the parties in this courtroom, even ones with whom we are
17 constrained to litigate against today that we believe are
18 advancing the ball. It's not appropriate for me to talk
19 about what those things are in terms of documents or
20 stipulations or diligence or meetings because that is work
21 that should be behind the scenes.

22 But, obviously, the injunction which is what we
23 had aspired to really starting to months and months before
24 the case to give us all an initial window to try to progress
25 this in a very unusual and, you know, materially less

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1 litigious case that I think anybody could possibly have
2 imagined is actually proceeding exactly as we had hoped.

3 THE COURT: All right. That's very positive and
4 relevant. So is that going to be in the form of an amended
5 order?

6 MR. HUEBNER: Yes. Yeah. There's a supplemental
7 order that build -- it -- the way the order that we
8 submitted on November 6th worked, it sort of bridged, you
9 know, there was a footnote that said, the following parties
10 agree to voluntarily comply, essentially until we submit the
11 order which we hope will have the (indiscernible). There's
12 now an order that does it all. So there will be one amended
13 order, just like there was after the October 11th hearing
14 when, a week later, we got the full list of --

15 THE COURT: Right.

16 MR. HUEBNER: -- interim voluntary compliers and
17 we sent in an order. So this order will do it all and,
18 frankly, you may never need to enter another one because if
19 the voluntary compliance does not terminate by filing a
20 notice of termination on the docket, this order actually
21 runs till April.

22 THE COURT: All right.

23 MR. HUEBNER: So it's done, done.

24 THE COURT: Okay. And then I guess one other
25 point I wanted to raise with you. The stipulation with the

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1 creditors' committee and various shareholders --

2 MR. HUEBNER: Uh-huh.

3 THE COURT: -- and companies was noticed for
4 presentment. I think the objection date has passed.

5 MR. HUEBNER: Yes. I believe --

6 THE COURT: Is --

7 MR. HUEBNER: -- it was actually yesterday, Your
8 Honor.

9 THE COURT: So will you be sending that to me
10 also?

11 MR. HUEBNER: Yes. The answer is yes. There's
12 actually one thing that someone asked me to clarify with
13 them and just in the frenzy of preparing for this we weren't
14 able to do that. I think it works just perfectly and we'll
15 probably send it in some -- someone will -- someone at Davis
16 Polk please remind me to make sure we take care of that when
17 this hearing is over. And that should, I believe, be ready
18 for entry as well, another milestone and maybe I should have
19 listed as yet another thing I think is atypical and quite
20 important to try and help us all proceed rationally in an
21 almost impossibly difficult and complex situation.

22 THE COURT: Okay.

23 MR. HUEBNER: With that, Your Honor, the -- I
24 think it probably makes sense to just knock out the
25 uncontested matters first so that we can get them out of the

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1 way and ensure that the Court does not have any questions.
2 And I would turn the podium over to my colleague, Dylon
3 Consla, for that.

4 MR. CONSLA: Good morning, Your Honor.

5 THE COURT: Good morning.

6 MR. CONSLA: So I'll try and move through the
7 uncontested matters quickly here.

8 THE COURT: Sure.

9 MR. CONSLA: So the first item on the agenda is
10 the commercial lease projection, Docket Entry Number 435.
11 There were no objections and we filed a CNO at Docket Number
12 507. So unless there are any questions we would ask that
13 that relief be granted.

14 THE COURT: This is the lease in Princeton?

15 MR. CONSLA: That's correct.

16 THE COURT: All right. Where the property was
17 turned over towards the end of September?

18 MR. CONSLA: That's right, yeah, as of the date
19 that we're seeking to reject as of. It was vacated.

20 THE COURT: Okay. I'll grant that motion which,
21 as you say, is unopposed and supported by good business
22 reasons. So you can email that order to chambers.

23 MR. CONSLA: Thank you.

24 The next item on the docket is the ordinary course
25 professionals' motion. This is Agenda Item Number 2, Docket

1 Entry 128.

2 So in this case after extensive discussions with
3 the committee and the ad hoc group, we filed a proposed
4 revised form of order last night with admittedly fairly
5 extensive changes, but the result of that negotiation we
6 think addressed all of the issues.

7 I have a blackline to hand up if you --

8 THE COURT: Well, I -- this is the same version
9 that was sent to chambers yesterday, I believe.

10 MR. CONSLA: Correct.

11 THE COURT: So I have that.

12 MR. CONSLA: Okay.

13 THE COURT: So does anyone have anything further
14 to say on this motion?

15 Okay. I guess the one -- the order talks about
16 disclosure in connection with former representation or
17 current representation of shareholders.

18 MR. CONSLA: That's right.

19 THE COURT: I'm not sure the form actually pulls
20 that up, the form that's attached, the disclosure form.

21 MR. CONSLA: You're looking to Question 9 in the
22 questionnaire?

23 THE COURT: Well, maybe I just missed it.

24 MR. CONSLA: Here. I'm --

25 THE COURT: It is there? Okay.

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1 MR. CONSLA: It's at the very, very end. I think
2 if you flip to literally the last page.

3 THE COURT: Oh, yeah. You did. Oh, so -- okay.

4 I was looking at the old form. But you added that question.

5 MR. CONSLA: Yeah. That's right. Can I hand up a
6 blackline if you don't have --

7 THE COURT: No. No. I have it. I just --

8 MR. CONSLA: Okay.

9 THE COURT: I just -- I stopped at the order.

10 MR. CONSLA: Yeah.

11 THE COURT: Okay. Thank you.

12 MR. CONSLA: Yeah.

13 THE COURT: So I'll grant the motion.

14 MR. CONSLA: Okay. Thank you, Your Honor.

15 THE COURT: Okay.

16 MR. CONSLA: So I would turn back to the remainder
17 of the agenda.

18 So the next item is the interim compensation
19 motion. In this case we also -- that's -- sorry. That's
20 Docket Number 434. We filed a CNO at Docket Number 510.
21 The CNO attaches a revised order that has literally one
22 change to one number; that is, changing the period after the
23 45 days to submit fee applications to scheduling a hearing
24 from 45 days to a 30 days for people to review at that
25 point, and all the relevant parties agreed to that.

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1 So we would -- unless Your Honor has any
2 questions, of course, respectfully ask that that motion be
3 granted.

4 THE COURT: Okay. Does anyone have anything to
5 say on this motion?

6 All right. Based on my review of it, it's
7 consistent with similar interim compensation motions that my
8 colleagues have entered over the years consistently in cases
9 of this size.

10 There's no cash collateral order here, so there
11 isn't the same need to monitor cash as per a carve-out or a
12 budget. But on the other hand, I think it's worthwhile to
13 have key parties in interest reviewing the fees every month
14 to make sure no one's going off the deep end or even the --
15 you know, exceeding what they should be doing as far as
16 expectations. So I think it's worthwhile to have this
17 procedure here.

18 So I'll grant the motion.

19 MR. CONSLA: Thank you, Your Honor.

20 So the next items on the agenda are retention
21 applications for both the debtors and then for the committee
22 professionals. So I would ask to preference. Should I walk
23 through those individually or would you prefer to consider
24 them as a group?

25 THE COURT: Well, I have reviewed each of them and

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1 I can tell you I have -- I appreciate -- and these are the
2 uncontested ones.

3 MR. CONSLA: The uncontested ones. Correct. The
4 contested ones are later in the agenda.

5 THE COURT: Right.

6 I really only have two -- one question and one
7 issue.

8 MR. CONSLA: Uh-huh.

9 THE COURT: Let's put it that way. On the law
10 firms which include Dechert, King & Spalding for the
11 debtors, and Akin Gump and Bayard for the committee, I only
12 had one question, which is -- which I'll preface by saying I
13 actually welcome the notion that the committee decided to
14 hire Bayard not as a conflicts counsel, but as an efficiency
15 counsel, which is, I think, a nice way of saying a less
16 expensive counsel for matters that are appropriate.

17 But as far as the services that Bayard is
18 rendering, and I appreciate that they acknowledge that
19 they'll be doing the best they can not to duplicate efforts,
20 some are listed as being requested by Akin Gump and the
21 committee, some are listed as assisting Akin Gump and the
22 committee, and some are listed as working in conjunction
23 with Akin Gump and the committee.

24 And I'm just not sure what -- is there any real
25 distinction there? I mean, how are they getting their

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1 assignments. That's really my question. So that there's
2 some control over avoiding duplication of effort and they
3 know what they're supposed to be doing and they're tasked to
4 do it.

5 MR. ALBERTO: May I address that?

6 THE COURT: Sure.

7 MR. ALBERTO: Justin Alberton from Bayard,
8 proposed co-counsel to the committee or efficiency counsel
9 as Your Honor just mentioned.

10 When we drafted this agenda, we were still -- or
11 excuse me, when we drafted this application we were still
12 working through proposed assignments and division of labor
13 issues with Akin Gump.

14 If Your Honor were to look at the agenda for
15 today, so as an example, there are things like the ordinary
16 course professionals motion, interim comp, and other various
17 retention issues that my firm has handled. And we have
18 strived over the course of the last 45 days to make sure
19 that things that Akin Gump is handling Bayard is not, and
20 vice versa.

21 THE COURT: So is there some coordinating person
22 at each firm that basically --

23 MR. ALBERTO: That's been Mr. Preis and myself,
24 Your Honor.

25 THE COURT: Okay. So you just -- when something

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1 is filed on the docket or the committee wants somebody to
2 look at it, you two speak to each other and --

3 MR. ALBERTO: That's absolutely right. And we
4 don't act without speaking to Mr. Preis first.

5 THE COURT: Okay. All right. That's probably the
6 only person in his life that's like that, but --

7 (Laughter)

8 MR. ALBERTO: It's been a fun 45 days.

9 THE COURT: So that's fine. And, again, the
10 assignment is something I welcome.

11 So I'll grant the application as well as the other
12 attorneys' applications. I think we should amend the order
13 just to reflect what was stated on the record as far as, you
14 know, the division order.

15 MR. ALBERTO: We can do that, Your Honor.

16 THE COURT: Okay.

17 MR. ALBERTO: Thank you.

18 THE COURT: Thank you.

19 Okay. And then I -- does anyone -- let me just
20 say, does anyone have anything to say on the uncontested
21 counsels' retentions? Okay.

22 And then turning to the financial advisors,
23 bankers, et cetera, as well as Prime Clerk, so that would be
24 AlixPartners, Prime Clerk, Province, Inc., Jefferies. I
25 don't think -- and I'm sorry, Kurtzman Carson. Three -- I'm

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1 sorry. Four of those as is -- well, all of them, as is
2 consistent with, again, the case law in this district, have
3 a limitation on a limited identity. They're indemnified
4 other than for their gross negligence, willful misconducts
5 -- misconduct, in some cases, and/or breach of fiduciary
6 duty, if any.

7 But four -- Prime Clerk, AlixPartners, KCC and
8 Jefferies -- have caps on those indemnifications limited to
9 their compensation of the case. And I don't know if this
10 has been the subject of discussion with them. I know in
11 recent cases involving Prime Clerk and Kurtzman Carson I
12 have stricken that on the basis that the type of liability
13 we're talking about here is really serious, willful
14 misconduct, gross negligence, and it's quite conceivable
15 that it could be more than the fairly limited compensation,
16 at least that those entities would have.

17 So I don't know if this has been discussed or if
18 their representatives are present here, but my inclination
19 would be to lift the limitation on liability for at least
20 willful misconduct and breach of fiduciary duty, if any. I
21 mean, to me if someone is just looting and pillaging, that
22 it shouldn't be limited to their fees.

23 MR. CONSLA: So for that matter I think we would
24 defer to the particular professional.

25 THE COURT: I'm not assuming that they will, of

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1 course. So it's probably an ice in winter, but I just don't
2 like the idea of proving that.

3 MR. CONSLA: If any --

4 THE COURT: Okay. Well --

5 MR. CONSLA: -- if anyone wanted to --

6 THE COURT: Well, I will grant each of those
7 applications with that language taken out. And the U.S.
8 Trustee can show you language from one of my more recent
9 orders dealing with, I forget whether it was KCC or Prime
10 Clerk, but --

11 MR. CONSLA: Uh-huh.

12 THE COURT: -- it's a -- it's one more carve out
13 that's in the order. If I'm missing something here that is
14 of great moment to AlixPartners or Jefferies, who clearly
15 have more fees at stake, so, you know, they can tell me.
16 But that's my ruling on those motions.

17 MR. CONSLA: All right. We'll make that change.

18 THE COURT: Okay.

19 MR. CONSLA: The last uncontested matter is the
20 creditor committee's information access motion. And so, you
21 know, obviously if you have any questions I'll defer to
22 them. If not, we have no objections to that being granted.
23 That's Item -- Agenda Item Number 13.

24 THE COURT: Okay.

25 MR. CONSLA: Docket Number 415.

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1 THE COURT: All right. Does anyone have anything
2 to say on the committee information access motion?

3 Just to be clear, this is not anything more than
4 the access the committee -- as a committee is required to
5 provide under the Bankruptcy Code and the appropriate
6 limitations on it to the public, not access to information
7 that the parties are looking on and the case generally,
8 which would be the subject of either a motion or hopefully a
9 stipulation.

10 So seeing no one has any questions or comments,
11 and noting that it's unopposed, I'll grant the motion. I
12 think I had the first opinion that actually dealt with the
13 issues raised by the amendment to the code that dealt with
14 the tension between a committee's duty to provide access to
15 the public and its duty not to disclose confidential
16 information, waive attorney/client privilege and the like,
17 and -- in the Refco case, and I think this protocol as well
18 as the use of the information agent is consistent with the
19 case law.

20 So I'll grant the motion.

21 MR. CONSLA: Thank you, Your Honor.

22 That brings us to the end of the uncontested
23 section of the agenda. So at this time I'll hand the podium
24 over to Mr. Huebner to address the contested applications.

25 THE COURT: Okay.

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1 MR. HUEBNER: Your Honor, for the record, Marshall
2 Huebner. I will be very quick on this remaining point.

3 The United States Trustee has no objection to
4 retentions of Davis Polk, Skadden Arps and Wilmer Hale, but
5 has objected to what is contemplated by these applications
6 which is the firms holding their retainers until the end of
7 the case.

8 I'm going to make nine very quick points and
9 otherwise rest on our papers which I think address the issue
10 appropriately.

11 One, this is a very unusual case. Your Honor
12 actually just mentioned, and I'm glad since it's a perfect
13 segway, most cases have carve outs and they have super
14 priority claims. And the way the professionals in part are
15 comforted by the risk that they're asked to take by the
16 statutory structure is that they are basically guaranteed to
17 jump even on top of secured creditors for all fees incurred
18 prior to a trigger date and then for an agreed budgeted
19 amount for amounts afterwards. And those are given both
20 status and lien rights super to anyone else.

21 We have none of that here, and you might say,
22 well, there's no secured debt here. But what we do have
23 instead, frankly, is a truly unprecedented case with dozens
24 of governmental claimants, many of whom have rights that
25 they have not actually necessarily chosen yet to surface

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1 with or exercise, but could actually, if things don't go
2 well, take this case in a very complex direction.

3 Number two, the debtors have a very substantial
4 cash balance, over a billion dollars. And even the trustee
5 has not alleged that we are draining liquidity that is
6 needed by the estate right now to pay its bills. and so,
7 you know, I think that's a relevant factor as well. It's
8 relevant in case law and otherwise. You know, if the
9 debtors had \$20 million of cash left in the bank, we would
10 at least be having more complex conversation. With well
11 over a billion dollars, it really is hard to understand why
12 we're actually here litigating this issue.

13 Three, no party in interest, no economic party in
14 this case has objected to this, neither the professionals,
15 which the U.S. Trustee kind of strangely says is one of the
16 two groups they're here to protect, but they're here
17 representing other professionals who don't have this exact
18 package of rights. They don't seem fussed by it, nor any
19 other party in interest. The test is actually, you know, is
20 this a problem for creditors. And we're not lacking for a
21 surfeit of highly activist focused creditors in this case,
22 and not a single one of them has had any issue with this.

23 Four, the U.S. Trustee is just wrong.
24 Professionals hold retainers all the time, both out of court
25 and in court. We stopped at 17 examples in the pleading

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1 because, you know, you have to know when enough is enough.
2 But the notion that there is some doctrine that, you know,
3 this is just not done is just flatly wrong, period, end of
4 story.

5 Five, there is no rule, there is no regulation,
6 there is no statute, there is no guideline, there is just
7 nothing that requires this. There just isn't. We're
8 constrained in lots of ways by lots of rules that people
9 impose on us. This one is just not on the books. And to
10 try to add this in as sort of a new rule in this district
11 when it's just not, and as much as I respect the U.S.
12 Trustee, it shouldn't be. It's not appropriate. The cases
13 they actually cite talk about a kind of facts and
14 circumstances test, and if we're going to be discussing it,
15 we should be discussing it under the little case law that
16 there is which we're happy to do.

17 Because, six, even the cherry picked cases the
18 U.S. Trustee cites, not one of them from this district, some
19 from more than 30 years ago and 3,000 miles away, we easily
20 satisfy. We went through the standards in our reply. There
21 are five factors in Insilco and we're five for five.

22 And, by the way, every single case they cited,
23 every one approved the professional holding the retainers.
24 So, in fact, I don't think they found any case ever in the
25 world, no matter how many decades they went back, where a

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1 court actually said, and they cited to this court, let alone
2 in a binding way that retainers have to be given up at the
3 beginning of a case.

4 Seven, these three firms are actually extending de
5 facto trade terms that are longer than any administrative
6 creditor in this entire case. The whole case, there is not
7 one creditor, because I asked, that is extending 75 day
8 unsecured trade terms to this estate, not one.

9 Eight, there is no basis and none articulated for
10 asking counsel to take the most risk and extend the most
11 credit of anybody in the constellation of the debtors'
12 dozens or hundreds of counterparties.

13 Nine, and this is the last one, all of Purdue's
14 other administrative creditors have either letters of
15 credit, deposits, COD or trade terms well below 75 days.
16 Only the professionals have to contend with notice periods,
17 objection periods, 20 percent holdbacks, 45 day waiting
18 periods and then another 30 day waiting period for hearings,
19 and, collectively, lend the debtors millions and millions of
20 dollars entirely unsecured and entirely interest free at all
21 times.

22 The trustee's claim that we have a "unfair
23 monetary advantage over other creditors" is unsupported and
24 unsupportable. We ask that their objection be denied and
25 that the retentions be approved as requested.

1 THE COURT: Do you -- this has not come up and I'm
2 assuming maybe -- well, I'll just ask you a question. I
3 don't know the answer. Are there substantial 503(b)(9)
4 claims here?

5 MR. HUEBNER: No.

6 THE COURT: Oh, okay.

7 I don't actually have the three firms' retainer
8 agreements. And the other two firms' application doesn't
9 really say that they're evergreen retainers. I don't know
10 where -- what type of retainers are all three of these?

11 MR. HUEBNER: Yes. So, Your Honor, I don't want
12 to over speak for the other firms, but let me say it like
13 this. Certainly, it is understood -- and if it's helpful to
14 the Court we will certainly add language that the retainers
15 will be applied at the end of the case or otherwise as
16 appropriate, and then any overage will, of course, be
17 returned to the debtors. I don't think anybody is saying
18 that anybody gets to keep what's leftover. Davis Polk's
19 documents, which obviously I do control, are very clear on
20 that point and they are evergreen retainers and properly
21 structured as such.

22 I am assuming that Skadden and Wilmer are the same
23 way, but I think it's an easy fix in the order to clarify
24 that nobody is remotely suggesting that this money can be
25 kept. It needs to be applied. The question is just, you

1 know, like so many other creditors in the case, are we
2 allowed to essentially modulate what in our case is actually
3 extreme trade terms and credit risk.

4 You know, as I said in the pleading, you know, you
5 know X percent of the utilities went and got deposits pre-
6 filing. No one is saying, hey, utilities, other utilities
7 are sad that they didn't ask, you have to give back your
8 deposits. This is just an individual contract and we think
9 it's entirely appropriate.

10 THE COURT: Okay. And then my last question is
11 these are not couched under 328(a), right, so I think I'm
12 reviewing this under 329 because it was a pre-petition
13 retainer? So I guess conceivably if facts changed
14 dramatically in the middle of a case, one could revisit
15 whether the retainer should be applied then or not, I
16 suppose.

17 MR. HUEBNER: I mean, as Your Honor said at prior
18 hearings, people are always welcome to make motions in front
19 of you. But, yes, there's nothing here that says that the,
20 you know, extraordinary unforeseeable circumstance and --
21 no. We don't lock this down under 328 at all --

22 THE COURT: Okay.

23 MR. HUEBNER: -- to my knowledge.

24 THE COURT: All right.

25 MR. HUEBNER: I mean, again, just like I can't

1 imagine a circumstance where somebody would say a utility
2 needs to give back their deposit unless it was a preference
3 or a fraudulent transfer, and in this case, frankly, we
4 would be happy to defend the retainers on those grounds as
5 well, Pillowtex (sic) ironically has made us all very
6 careful and very thoughtful to ensure that we have
7 appropriate mechanics in place well before the filing so
8 that we can stand up and be unquestionably comfortable that
9 we're disinterested which actually is a higher value,
10 frankly, under the code for 327(a) counsel than virtually
11 anything else.

12 And as Your Honor of course knows the U.S. Trustee
13 does a very searching Pillowtex analysis before the filing
14 and obviously was satisfied. This is the absolutely only
15 issue that is open on the retentions.

16 THE COURT: Okay.

17 MR. SCHWARTZBERG: Good morning, Your Honor. Paul
18 Schwartzberg for the U.S. Trustee's office. I'll beat Mr.
19 Huebner and just bring up three points, Your Honor.

20 (Laughter)

21 THE COURT: Okay.

22 MR. SCHWARTZBERG: Unlike the normal case where
23 there is a carve out, the reason there's not a carve out
24 here is because there's no secured debt or virtually no
25 secured debt. The debtor, according to their first day

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1 declaration, has over a billion dollars of cash that is
2 unencumbered.

3 On top of that, they're getting -- the
4 professionals are going to be paid as per Your Honor's prior
5 order today on them monthly where they're going to be
6 getting 80 percent of their fees and a hundred percent of
7 their expenses.

8 Based on that, which is the unencumbered cash is
9 an unusual circumstance, we did not believe that the
10 evergreen retainer was necessary in this case to protect the
11 professionals.

12 THE COURT: Okay. I mean, it strikes me given
13 what I think are the undisputed facts here that this dispute
14 really isn't particularly pointed on either side. You know,
15 it seems to me that the code doesn't have a requirement
16 either way on this point. And the only case law -- and that
17 -- I mean, I think there are two thoughtful decisions, the
18 Insilco and the Hospital (sic) case, and neither of them
19 really comes up with a bright line as to when it's
20 appropriate and when it's not appropriate to have an
21 evergreen retainer.

22 And, frankly, I think that given the various
23 issues at stake, one could argue that it's more appropriate
24 when there is financial risk. But on the other hand, if
25 there's no financial risk to either side, maybe it doesn't

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1 really matter. I mean, I just -- I just don't really see
2 this as a particularly important issue for the case.

3 And since congress didn't really address it other
4 than the notion that a prepetition payment needs to have
5 been reasonable under Section 329, this appears to be
6 reasonable to me. It's not -- you know, it's not -- these
7 retainers are not out of line for the level of work that was
8 being done and anticipated to be done.

9 We've clarified that their true security evergreen
10 retainers, i.e. any surplus comes back. And I just -- you
11 know, to me I don't think anyone's ox is really being gored
12 here.

13 So I think what's really an issue is whether I
14 should establish some principal that you can never get an
15 evergreen retainer, and I'm just not prepared to do that. I
16 don't think there is such a legal requirement --

17 MR. SCHWARTZBERG: I --

18 THE COURT: -- particularly given the logic of the
19 Insilco case and the American Hospital case, which, you
20 know, as I said, I think they're the -- they're clearly the
21 two decisions that -- I'm sorry -- Pan American Hospital
22 case, 312 B.R. 706 (Bankr. S.D. Fla. 2004) and then Insilco
23 is In re: Insilco Technologies Inc., 291 B.R. 628 (Bankr. D.
24 Del. 2003).

25 I guess ultimately here, and I know you hate to

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1 hear this and I appreciate that the U.S. Trustee has a major
2 role to flag issues. And sometimes when you flag issues
3 other parties join in and sometimes they don't. But no
4 creditor whose ox might be gored here is complaining. And I
5 think that's a major factor, as well as I don't think
6 there's -- this retainer creates a conflict with anybody
7 ultimately.

8 And since it's not a 328 type of compensation,
9 just 329 reasonableness, if there is some conflict down the
10 road, and it's hard for me to imagine that there would be, I
11 would balance the issue there and probably at that point the
12 firm would -- the firms would apply their retainer anyway.

13 So I'm going to overrule the objection and grant
14 the applications as sought.

15 MR. SCHWARTZBERG: All right. Thank you, Your
16 Honor.

17 THE COURT: Okay.

18 MR. ROBERTSON: Good morning, Your Honor. For the
19 record, Christopher Robertson, Davis Polk & Wardwell on
20 behalf of the debtors. We're going to turn to the second
21 contested matter. It was actually the first contested
22 matter on the amended agenda at Item Number 14, the debtors'
23 cash management motion.

24 There is one objection to the cash management
25 motions from the United States Trustee. The U.S. Trustee

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1 opposed the debtors' request for a waiver of the
2 requirements of Section 345 of the Bankruptcy Code with
3 respect to excess cash invested in two Goldman Sachs
4 treasury funds.

5 We did, of course, work with Mr. Masumoto to try
6 to resolve this matter consensually, but unfortunately we're
7 not able to work out this issue with the U.S. Trustee's
8 Office.

9 Before I move onto the motion, we filed
10 supplemental declaration of John Lown (ph), the debtors'
11 chief financial officer in support of the cash management
12 motion. As noted on the amended agenda, the declaration is
13 filed as Exhibit A to the debtors' reply at Docket Number
14 480-1. Mr. Lown is in the courtroom today, if anybody has
15 any questions. If not, I would ask that the declaration be
16 admitted into evidence at this time.

17 THE COURT: Okay. Does anyone want to cross-
18 examine Mr. Lown on his supplemental declaration?

19 All right. I will admit it as his direct
20 testimony.

21 MR. ROBERTSON: Thank you, Your Honor.

22 Your Honor, I do not intend to rehash every point
23 we made in our papers. I would like to briefly explain why
24 we believe that a requested Section 345 waiver is
25 appropriate and why continued access to the Goldman money

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1 market treasury accounts is important to the debtors'
2 estates. Not that Your Honor needs any permission, but
3 please feel free to interrupt me if you have any questions.

4 So why is this waiver appropriate? At a high
5 level, Section 345(b) of the Bankruptcy Code provides that
6 estate funds may be held in three ways: In investments or
7 accounts insured or guaranteed by the United States or by a
8 department agency or instrumentality of the United States;
9 in investments or accounts backed by the full faith and
10 credit of the United States; or with entities that have
11 posted a bond or provided acceptable collateral as security
12 for the deposit or investment.

13 The U.S. Trustee's main concern, as I understand
14 it and it's voiced at page 2 of the objection, is that the
15 debtors are asking for a fourth option; that is, the debtors
16 are asking for the Court to set aside the safeguards within
17 Section 345 in the interest of convenience, efficiency and
18 cost.

19 And, Your Honor, the debtors are not asking for a
20 fourth option or special treatment and we are not asking the
21 Court to set aside any statutory safeguards whatsoever. As
22 discussed in Mr. Lown's supplemental declaration, the
23 debtors adhere to long-standing investment guidelines that
24 only permit the debtors to invest in treasuries or in
25 deposits collateralized by U.S. Treasury or U.S. agencies.

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1 This is what I'm calling Option 2, Your Honor. You know,
2 this is an investment backed by the full faith and credit of
3 the United States.

4 The debtors are requesting to continue to invest
5 in treasuries by investing in two treasury funds managed by
6 Goldman Sachs. In other words, the debtors are seeking to
7 comply with both the letter and the spirit of Section 345.

8 THE COURT: So I guess this was clarified for me
9 in Mr. Lown's supplemental declaration. He states that both
10 of those funds only invest in treasuries, U.S. Treasuries
11 and can only invest in U.S. Treasuries. And obviously
12 they're also rated at the highest level --

13 MR. ROBERTSON: That's correct.

14 THE COURT: -- of applicable rating I think
15 probably in light of that.

16 So I guess -- I mean, that -- to me that largely
17 ends the story. I don't know. He says that they monitor
18 the cash. I don't know what that means. I guess they would
19 pay attention if there's some press story about the funds
20 and someone deciding to violate the securities laws and the
21 funds' governing documents and move the treasuries into, I
22 don't know, wingets (sic) or realles (sic), or something. I
23 don't --

24 MR. ROBERTSON: Yeah. And not to belabor the
25 point, and Mr. Lown can speak to it, but the funds publish

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1 weekly statements that have, you know, every treasury that
2 they hold. And so it's very easy to monitor these accounts.

3 THE COURT: Okay. All right. And, I mean, it is
4 true, you are taking the credit risk of the fund as opposed
5 to the underlying treasuries. But if the only asset in the
6 fund and permitted to be in the fund is the treasuries, then
7 they're essentially coterminous --

8 MR. ROBERTSON: Right.

9 THE COURT: -- other than the fact that the
10 government can always print more treasuries and the fund
11 can't get back anything that's let out by fraud.

12 But that same risk applies to a surety as well.
13 You're only getting the credit of the surety, which congress
14 recognized in Section 345 as a proper way to protect the
15 estate, too.

16 MR. ROBERTSON: I agree, Your Honor.

17 THE COURT: There's no collateralization of what's
18 in the fund for any of the investors; is that right?

19 MR. ROBERTSON: No. That's correct, Your Honor.
20 There's --

21 THE COURT: Yeah.

22 MR. ROBERTSON: That's correct.

23 THE COURT: All right. Okay. So I interrupted
24 you, but you can go on.

25 MR. ROBERTSON: No. I think that you covered a

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1 lot of what I was going to say about the nature of the
2 mutual funds and the debtors' investment.

3 You know, the last thing I would say and just to
4 kind of reiterate the point and then I'll cede the podium
5 is, you know, just to return to a theme I kind of touched on
6 at the beginning. This is not a case where the debtors want
7 to continue an investment program out of, you know,
8 convenience or cost.

9 The alternatives that the trustee suggests, which
10 is holding treasuries directly by purchasing them from the
11 government or moving all of the excess cash into the deposit
12 account, both of these are not viable and Mr. Lown provided
13 testimony as to the difficulties the debtors would have
14 moving cash into a deposit account. And holding treasuries
15 directly creates a whole host of other operational and
16 control risks that --

17 THE COURT: Well, that would be a much bigger
18 control risk because --

19 MR. ROBERTSON: Correct.

20 THE COURT: -- only one person is authorized to
21 have them. So unless you have that person under 24-hour
22 surveillance, they're at risk of going somewhere.

23 MR. ROBERTSON: Correct.

24 (Laughter)

25 MR. ROBERTSON: And with that, unless Your Honor

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1 has any further questions for me, I would --

2 THE COURT: Well, the money that -- the other cash

3 --

4 MR. ROBERTSON: Uh-huh.

5 THE COURT: -- I just want to confirm, Mr. Lown
6 says that all of that other cash is in an escrow reserve or
7 a trust account that the party for whose benefit its posting
8 is comfortable with.

9 MR. ROBERTSON: That's correct.

10 THE COURT: It's their collateral and -- or
11 required by regulation or agreement to put in that account.

12 MR. ROBERTSON: Not for the -- for the \$130
13 million that's held in trust accounts that are invested in
14 treasury money markets it's essentially -- that's a
15 different institution. I believe most of those are with
16 Wells Fargo. But it's exactly the same structure as where
17 the debtors have their cash at Goldman. So it's the same
18 story.

19 THE COURT: And is it in any special fund or just
20 at Wells Fargo?

21 MR. ROBERTSON: It's in -- I would refer to Mr.
22 Lown, but my understanding is that it's in the treasury
23 money market funds that are administered by Wells as posted
24 by Goldman Sachs.

25 THE COURT: So it's just -- is it limited to the

1 treasuries again --

2 MR. ROBERTSON: Correct.

3 THE COURT: -- those funds?

4 MR. ROBERTSON: Correct, Your Honor.

5 THE COURT: Okay. He's nodding his head there
6 behind you, nodding it yes. Okay.

7 All right. Very well. Thank you.

8 MR. ROBERTSON: Thank you, Your Honor.

9 MR. MASUMOTO: Good morning, Your Honor. Brian
10 Masumoto for the Office of the United States Trustee.

11 I know Your Honor has addressed the specifics
12 regarding the particular investments, and so essentially I
13 would like to focus in on the area that our office has
14 concerns with, which is we believe that the investment
15 through a fund is not the same as holding the direct
16 treasuries by the debtor and, accordingly, does not fit
17 strictly within the elements under Section 345.

18 We don't have -- the U.S. Trustee does not have
19 the authority to grant a waiver, and although one can argue
20 about the various risks and so forth, it's not the U.S.
21 Trustee's intent or responsibility to determine the
22 soundness or the integrity of particular funds.

23 So from our standpoint an investment through the
24 fund creates a non-compliance with the statute that can only
25 be approved by the Court granting a 345 --

1 THE COURT: Okay.

2 MR. MASUMOTO: -- waiver.

3 THE COURT: All right. I mean, and that's fair.

4 The statute doesn't -- what gives the trustee discretion is
5 in 345(b)(1)(B), where the money is invested in a bond in
6 favor of the United States secured by the undertaking of a
7 corporate surety. So it does give you the discretion to
8 evaluate the -- as the debtor says, approved by the United
9 States Trustee. So it gives the -- your office the
10 discretion to evaluate the credit worthiness of the surety,
11 but not the particular fund where the bonds are held.

12 MR. MASUMOTO: That's correct, Your Honor.

13 THE COURT: All right.

14 MR. MASUMOTO: And one -- although there was --
15 and that's with respect to, I guess particularly the
16 argument applies to the Goldman Sachs funds which have been
17 discussed.

18 One thing that it was not entirely clear is with
19 respect to the restricted funds. It wasn't clear to me. In
20 Mr. Lown's declaration there were indications that they were
21 held in I guess government obligations, and that's part of
22 the problem. The Goldman Sachs fund -- well, it may be --
23 it may pose a problem. The Goldman Sachs fund where it's
24 supposedly exclusively for a government treasury is at least
25 from our experience relatively unusual because many

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1 government fund accounts are not exclusive. I mean, it's
2 usually a mixed bag of investments which may primarily be in
3 government obligations, but not exclusively.

4 So it's not entirely clear to me whether the
5 restricted funds are, in fact -- although I believe there
6 was some statement that seems to suggest that Goldman
7 managed some of those escrow funds, and if that's the case
8 being exclusive, then the -- your ruling with respect to the
9 Goldman accounts would apply.

10 But to the extent that those other funds, in fact,
11 are not exclusive with respect to government obligations,
12 you've increased the risk of those particular funds.

13 And accordingly, again, once again it would be
14 Your Honor's discretion --

15 THE COURT: Well, he says the cash held in the
16 various Wells Fargo accounts and the DLKF account are
17 invested in money market treasury funds.

18 MR. MASUMOTO: Right. And -- but in many money
19 market treasury funds as such, they're not exclusive. I
20 mean, in our experience those so-called funds often have a
21 mix. I mean, they may be primarily holding government
22 treasuries, but not exclusively.

23 And so it's not, at least if that were the case
24 it's not identical to the Goldman Sachs case situation where
25 it's exclusively limited to government securities.

1 THE COURT: Okay.

2 MR. ROBERTSON: And, Your Honor, I think just one
3 brief point. I don't -- I have a printout of every treasury
4 held by the Goldman funds. I don't have a printout of every
5 treasury held by the other restricted cash accounts. But I
6 would just add that, you know, this is a very highly
7 regulated industry and, you know, major institutions that
8 administer treasury money market funds, you know, can't use
9 that term, you know, loosely. There are regulations under
10 the SEC and otherwise that, you know, specify what a
11 treasury money market fund is.

12 So this is not a case where these funds are
13 holding, you know, half their funds in treasuries and half
14 in junk bonds.

15 THE COURT: And is this -- are these funds also
16 monitored by the company on a weekly basis?

17 MR. LOWN: Absolutely.

18 THE COURT: Okay. Okay.

19 MR. ROBERTSON: Thank you, Your Honor.

20 THE COURT: All right. I have before me the
21 debtors' request for final approval of their motion
22 authorizing the continuation of existing cash management
23 systems and maintaining existing bank accounts and business
24 forms.

25 The motion is objected to by the U.S. Trustee in

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1 one respect, which is that the debtors' investment of both
2 unrestricted cash and restricted cash, i.e. restricted based
3 on various agreements with third parties where the cash is
4 being held in one form or another for their benefit is not
5 being held consistent with Section 345 of the Bankruptcy
6 Code. That section provides for specific ways to hold money
7 of bankrupt debtors' estates for which no court ruling is
8 necessary.

9 One aspect of it, which I've already quoted, does
10 subject the United States Trustee to the exercise of some
11 discretion in terms of evaluating a corporate securities --
12 I'm sorry -- corporate sureties' undertaking.

13 But it provides for authorization to invest money
14 of the estates without court review if the money is invested
15 in a deposit or investment that is insured or guaranteed by
16 the United States or backed by the full faith and credit of
17 the United States. And that obviously is limited for a
18 company of this size given the amount of cash that we're
19 talking about here, which is somewhat over a billion
20 dollars, given the limitations on insurance or guarantees;
21 or, alternatively, invested in the bond in favor of the
22 United States secured by the undertaking of a corporate
23 surety approved by the United States Trustee and conditioned
24 on the proper accounting and faithful performance of duties
25 as the depository.

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1 However, there's a safety valve that congress
2 enacted which provides that the Court may order otherwise.

3 I have the benefit of a recent decision by one of
4 my colleagues, Judge Garrity, in *In re: Ditech Holding*
5 *Corp.*, 605 B.R. 10, (Bankr. SDNY 2019) analyzing the proper
6 application of this cause exception which was enacted in
7 1994. Judge Garrity also relies on *In re: Service*
8 *Merchandise Company Inc.*, 240 B.R. 29 (Bankr. Tenn. 1999).

9 I agree with the trustee that technically I don't
10 think these investment accounts necessarily comply with
11 345(b)(1). However, I actually don't believe that a hearing
12 is necessary on it. If the parties conduct their due
13 diligence and determine that cause should be warranted, they
14 could submit an order on that basis to chambers, thus
15 obviating the need for a hearing. I obviously read the
16 underlying motion, so if I disagree with the proposed order
17 and the finding it wanted me to seek, I would ask for a
18 hearing.

19 But here the totality of the circumstances best
20 applied by Judge Garrity and the Tennessee Court in *Service*
21 *Merchandise* argues that I should find cause here to approve
22 the investment. Among other things, the money is held in
23 funds that are weighted at the highest level. The funds
24 are, as far as I can see, allowed only to invest in U.S.
25 *Government treasuries.*

1 The funds are also reporting on a weekly basis to
2 the debtors and, therefore, the debtors will be able to
3 review whether there is any issue as to the funds'
4 management and the like.

5 Finally, and at least as important, the debtors
6 really don't have reasonable alternatives here. It's just
7 not a question for them of going down to a approved bank and
8 putting their money in the bank because it's clear from Mr.
9 Lown's declaration that they don't have that flexibility,
10 both given the size of their cash position and the nature of
11 banking in today's world where banks routinely say we don't
12 want your money, which is not only a problem for companies
13 like these, but also for individuals.

14 The only other alternative would be to hold the
15 treasuries actually in the debtors' own possession or in the
16 possession of someone who would be willing to do it and,
17 frankly, I don't believe that that entity would have the
18 type of control or credit support that the funds that are
19 currently holding the treasuries have.

20 So there's clearly substantial harm to the estate
21 of not getting this relief. Conversely, there's substantial
22 benefit to the estate of getting the relief. And the
23 calculus is, I think, here quite easy to determine that the
24 motion should be granted.

25 MR. ROBERTSON: Thank you, Your Honor. And I

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1 would turn the podium back over to my colleague, Marshall
2 Huebner.

3 THE COURT: Okay.

4 MR. HUEBNER: Good morning, Your Honor. For the
5 record again I am still Marshall Huebner of Davis Polk &
6 Wardwell on behalf of the debtors.

7 Your Honor, one interim update since I was last at
8 the podium, which is at 10:51 my partner, Tim Graulich, sent
9 in to chambers copying all relevant parties the injunction
10 order, which unless we are sadly mistaken, is ready to be
11 entered and hopefully will give us all the respite
12 aforementioned.

13 THE COURT: Okay.

14 MR. HUEBNER: Your Honor, I am obviously quite
15 well aware that this hearing is going to be hotly contested
16 on the one remaining issue on the agenda. But I also think
17 that there are actually many factual and quasi-factual
18 things that are not disputed.

19 One thing first, which is just in order of
20 operations, and I hope I get this right. I think that the
21 understanding and agreement with the objectors is that the
22 O'Connell (ph) declaration will be admitted into evidence;
23 that as of now I don't think people want to cross-examine
24 him, and that the deposition that was taken yesterday will
25 be admitted into evidence, may be into -- Mitch, how are you

1 --

2 MR. HURLEY: Sure. So Mitch Hurley with Akin Gump
3 on behalf of the official committee.

4 We took the deposition yesterday. We got the
5 final --

6 THE COURT: Of who?

7 MR. HURLEY: Of Mr. O'Connell.

8 THE COURT: Okay.

9 MR. HURLEY: The declaration that was submitted on
10 Friday, we agreed to take the deposition yesterday so that
11 we wouldn't have to push off this hearing. We got the final
12 transcript this morning at 7 a.m. We want to save at the
13 hearing and get right to the argument rather than doing live
14 testimony. So we're okay with --

15 THE COURT: Okay.

16 MR. HURLEY: -- relying on the deposition. We
17 unfortunately don't have pages to hand up to Your Honor
18 because we got it so recently. If after the presentation
19 the Court wants to see any of the excerpts, I'm sure you can
20 work with Davis Polk to provide designations and counter-
21 designations.

22 THE COURT: Well, okay. I -- as you know I
23 normally rule from the bench. So I think you're going to
24 have to at least quote to me what you think is worthwhile
25 quoting from your deposition.

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1 And I appreciate that properly so attorneys often
2 designate a lot more in a deposition. But usually it's one
3 or two quotes that actually make it into the ruling.

4 MR. HURLEY: Understood, Your Honor. We'll keep
5 that in mind for the presentation.

6 THE COURT: Okay. Can I -- before you go further,
7 Mr. Huebner, I got a revised proposed order --

8 MR. HUEBNER: Uh-huh.

9 THE COURT: -- the other day. Have there been any
10 other changes --

11 MR. HUEBNER: No. No. And, Your Honor, I'll be
12 walking through for the benefit of the Court in the course
13 of my remarks the changes that are reflected in our provided
14 revised order. There are no changes after that.

15 THE COURT: Okay.

16 MR. HUEBNER: So, Your Honor, it -- we take no
17 joy, it goes without saying, in being adverse to the parties
18 who are objecting today, the U.S. Trustee, the official
19 committee of unsecured creditors and then the ad hoc
20 committees representing individual victims, private
21 insurance entities, NAS babies (sic) and Native American
22 tribes.

23 Again, without saying more than I should, I think
24 that, you know, it is probably fair to say we tried awfully
25 hard to try to work something out that would obviate the

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1 need for this hearing, but were not able to do so, and here
2 we are.

3 So as I was trying to say, Your Honor, I think
4 there are a variety of things that we're going to be talking
5 about in the course of today that really are as much about
6 judicial notice and common sense as they are about evidence.
7 Judicial notice obviously is a concept that this Court is
8 intimately familiar with, In Delphi Corporation, for
9 example, 2009 Westlaw 2482146 at *20, Bankr. SDNY July 30,
10 2009 RDD, Your Honor took judicial notice of the docket of
11 the entire Chapter 11 case:

12 "Including without limitation all pleadings and
13 other documents filed, all orders entered and all evidence
14 and arguments made, preferred or adduced, at the hearings
15 held before the Court during the pendency of the Chapter 11
16 cases."

17 This has been done around the country by lots of
18 judge -- by many judges in many contexts, including
19 contested motions. I give only one example while the
20 examples are legion. Judge Gerber did a similar thing in the
21 Adelphia, 291 B.R. 283, page 291 and note 26 (Bankr. SDNY
22 2003) where he took judicial notice of different things on
23 his docket, specifically in connection with a 365 motion to
24 assume or reject the contract.

25 So I'm going to begin, which is where I thought it

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1 made sense to begin, by listing some factual things, some
2 quasi-factual things, some things from the docket and some
3 things that are just, frankly I think, common sense as much
4 as testimony and hopefully, frankly, narrow the issues and
5 dispense with some things along the way.

6 One, let there be no mistake. We all agree that
7 the opioid crisis is just a terrible crisis and tragedy, and
8 no one in this case -- and despite some of the language in
9 some of the objections -- certainly, the debtors in their
10 pleadings have ever minimized that or taken any position to
11 the contrary. And nothing about today's hearing could
12 possibly be read fairly to suggest to the contrary.

13 Two, as this Court knows because the Court has
14 noted it to parties several times, one-hundred percent of
15 the debtors has been unoffered to the claimants as part of
16 their settlement framework, and now the term sheet since
17 before the case was even filed, the remaining meta-questions
18 in this case involve how to best maximize the debtors' value
19 and assets and how and to whom to distribute them.

20 Three, we agree, every dollar spent during these
21 cases is arguably a dollar that could instead ultimately go
22 to help victims and ameliorate this terrible crisis. That
23 is exactly why resources need to be spent carefully and
24 thoughtfully, and the same questions or some variance
25 thereof always need to be asked: Is this an appropriate use

1 of money; is it likely to enhance the value of the estate or
2 accelerate these complex proceedings and ultimately increase
3 the distributions to claimants. Those are the judgments
4 that the debtors actually have to make, in fact, every day.

5 For example, the injunction hearings were very
6 intense and very hard fought and, candidly, also quite
7 expensive which is unfortunate. But as Your Honor
8 recognized not getting the injunction would likely have
9 diminished the estates by hundreds of millions of dollars or
10 more, multiples and multiples of what the injunction
11 hearings cost.

12 So the debtors expend, or when approval is needed
13 seek authority to expend, resources when they believe that
14 it will ultimately accelerate the case or otherwise
15 ultimately enhance recoveries.

16 Four, the creditors' committee is a fiduciary for
17 all unsecured creditors. Every single one. Notwithstanding
18 that as I accurately noted on the first day of the case
19 governmental entities who as of the petition date had filed
20 85 percent of the lawsuits then pending against the debtors
21 cannot be voting members of the UCC per the United States
22 Trustee.

23 This does not of course mean, and I'm not sure why
24 people seem to keep trying to misquote us on this, that
25 governmental entities will be 85 percent of the ultimate

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1 claimants. Obviously that number is unknown and unknowable.
2 There will be a bar date and claims will be filed, and we
3 will figure out how to go through them in efficient, unusual
4 and probably unprecedented ways. The 85 percent number was
5 and is a simple and correct statement of fact as of
6 September 15th, 2019.

7 Five, the creditors' committee has added a few
8 governmental entities as ex officio non-voting members.
9 Camera County, Texas, the designee of the multi-state group;
10 the Cheyenne and Rapaho (ph) Tribes designed by the ad hoc
11 group of 38 tribes as Your Honor knows in lieu of and
12 subsequent to which they withdrew their motion for a
13 separate committee.

14 While the debtors had nothing to do with these
15 decisions and learned of them only afterwards, it seems like
16 a fine idea to build a bigger tent at the UCC level with
17 non-voting members to hear more voices and garner more
18 points of view, including those of governmental entities.

19 But it bears noting, as Mr. Preis began the
20 hearing, that while we were advised a few days ago that the
21 State of Maryland was added as an ex officio non-voting
22 member, we then recently learned either yesterday or the day
23 before that they have since withdrawn their very short
24 tenure.

25 So now there are no states on the UCC, neither as

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1 voting members nor ex officio members, only two tribes and
2 one county who are, of course, very important, but different
3 in kind than sovereign states and, of course, have no vote.

4 Six, 47 State Attorneys' General, 47 of the 48
5 that are participating in this case, virtually all of whom
6 believe that they have meritorious lawsuits against Purdue
7 and related parties that they believe could or should
8 proceed notwithstanding these Chapter 11 cases because of
9 the police power and regulatory exception to the automatic
10 stay have now all agreed, hopefully until April 8th, but at
11 the very least until December 19th or February 21st to work
12 together to try to move these cases forward productively and
13 avoid what I think all agree would at its worst be a
14 destructive complication of litigation.

15 The 48th state, Arizona, has also agreed, but for
16 their reply brief which they have now filed. So I think --
17 their Supreme Court reply brief that we discussed at the
18 last hearing. I think 47 is now -- we're 48 for 48.

19 Seven, states are sovereign governments. Each is
20 charged with the solemn duty of protecting its citizens.
21 And in the constitutional system of the United States of
22 America, the states play a unique role. Principals of
23 federalism on which our government is based give the states
24 powers and responsibilities superior to their political
25 subdivisions and distinct also from those with the federal

1 government.

2 And as this Court knows very well, the states were
3 zealously using their police and regulatory powers to pursue
4 these debtors and related parties prior to the commencement
5 of these Chapter 11 cases.

6 Eight, these sovereign governments, each
7 represented by its most senior legal officer, are highly
8 unlikely ever to agree at the UCC that they did not select
9 and on which they cannot vote or sit except possibly as
10 observers, and as of now that number is zero, is their
11 primary voice or agent or proxy in these cases. Even though
12 under federal law the UCC cares about them just as much as
13 it cares about all other unsecured creditors, it's just not
14 going to happen. The states have been very clear and very
15 consistent about this from the moment these cases were
16 filed.

17 Nine, the probability that this company will be
18 able to emerge from Chapter 11 or optimize its ability to do
19 good for this country post-emergency without the support of
20 a very substantial number of state governments as I stand
21 here today seems to me to be quite remote.

22 This is not to say that we will not also be
23 seeking the support or non-objection of and that we will not
24 be working to build consensus with a great many other
25 claimants, both private and governmental. But the simple

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1 reality is that the rights of sovereign states with respect
2 to both the debtors and maybe more importantly the related
3 parties are just different in kind than the rights of
4 others.

5 Ten, we indeed signed a fee letter with the ad hoc
6 committee of supporting states and other governmental
7 entities on the eve of filing. In fact, I'll go better, on
8 the very eve of filing. But that's because we had for
9 months been building support for the settlement framework
10 state by state up until the very eve of filing. And that
11 deal included a fee concept which, as Your Honor knows quite
12 well, is not unusual at all.

13 In fact, we filed for Chapter 11 when we did
14 precisely because we had reached agreement on a settlement
15 framework with this important group, a deal that was and
16 absolutely positively remains critical to these cases and
17 their probability of success.

18 The notion of filing Purdue Pharma for Chapter 11
19 with no deal and no framework and no structure and no
20 supporting entities in hand and at the same time coming
21 before Your Honor with a request to freeze thousands of
22 lawsuits brought by governmental entities, many of whom
23 passionately assert and asserted at the hearing the police
24 and regulatory exemption from the automatic stay was a
25 proposition somewhere between daunting and terrifying.

1 Eleven, the supporting states have done since the
2 petition date what they said they would do. At no small
3 cost and risk they supported us at the injunction hearing
4 opposite an equal number of passionately opposing states.
5 And this followed many months of work towards the deal that
6 we believe maximizes the value of these estates to which
7 they stepped up when no other party was willing or able to.

8 The ad hoc committee also reached agreement with
9 us on a term sheet to put substantially more meat on the
10 bones of this continuously developing deal. As Your Honor
11 knows, that was October 7th, filed on the docket I believe
12 three days before the October 11th hearing. And since then
13 they and their advisors have been working to advance in
14 diligence and yet further flush out the deal, all of which
15 are preconditions for all parties in this case moving to the
16 next phase.

17 The ad hoc committee and the debtors exceeded to
18 the demand of the UCC in the days before the October 11th
19 injunction hearing that we not proceed with an RSA on the
20 schedule originally contemplated with the ad hoc committee.
21 But rather that we slow it down all the way until April, a
22 promise that was in the originally filed UCC stip filed at
23 approximately 9:15 a.m. before the injunction hearing began
24 and that Your Honor referred to earlier today, and those
25 provisions are unchanged in the amended UCC stip.

17 One, we eliminated the requested authorization to
18 amend the reimbursement agreement without further court
19 authority. Done. It's out. All that's being approved is
20 the letter as it stands.

21 Two, requiring the ad hoc committee's
22 professionals to follow the same compensation procedures as
23 the professionals of the debtors and the UCC, including,
24 one, submitting fee statements that comply with the U.S.
25 Trustee's fees guidelines; two, publicly filing fee

1 statements rather than providing them only to the debtors,
2 the UCC and the trustee; three, submitting monthly fee
3 statements and applications; four, providing for interim fee
4 hearings, objection deadlines and the resolutions of
5 objections all as defined in the interim comp order; five,
6 unless I'm miscounting which is possible, providing for a
7 holdback of 20 percent of the fees until such amounts are
8 approved following quarterly applications; six, conditioning
9 the payment of fees to Compass Lexicon and Culture
10 Injustice, two of the three financial advisors upon
11 subsequent court approval pursuant to a request therefore in
12 a monthly application.

13 Let me just explain. They're not currently at
14 work. And so we said, well, if they're not at work, rather
15 than having it look like we have three FA's, right now they
16 have one FA. And so if they end up needing either of these
17 two firms to start again, they can't get paid at all until
18 the next quarterly fee app or they need to come and explain
19 to the Court why they restarted and seek their fees at that
20 time. So we're not really down to one FA is all that is
21 actually de facto being approved today.

22 I'm going to stop counting because I didn't number
23 these which is a mistake. Expressly providing that people
24 can object, and it's anybody. And that's actually pretty
25 important. All the people who are very angry today are all

1 wearing the uniform of guard and cross-checker and police
2 person, right, because there are multiple grounds on which
3 the ad hoc people acknowledge that their fees can be
4 objected to: Are they not reasonable and documented, are
5 they duplicative of the work of other ad hoc committee
6 professionals with one another; are they outside the scope.

7 And we'll now have full bright sunlight and
8 whoever is fussed can raise their issues with the Court and
9 the fees will have to be defended. And I'm also sure that
10 with all that sunlight we'll also probably be seeing things
11 that, you know, hopefully fit comfortably within the rubric
12 that the debtors and others expect.

13 Next number, and this is important, clarifying in
14 the order that neither objecting to the claims of other
15 creditors or advancing or prosecuting the claims of members
16 of the ad hoc committee is considered within the scope.
17 That is outside the scope and we will not pay for that,
18 period.

19 Next, capping the amount of prepetition fees so we
20 have some certainty and in a number not to exceed 1.5
21 million, and further agreeing that they can't actually seek
22 or be paid for that at all right now. But that actually has
23 to wait for either an RSA or a Chapter 11 plan.

24 Next, clarifying that there will be a new motion
25 and order to pay the fees or have them retained and have the

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1 debtors pay for -- they can retain whomever they want. The
2 question is are we paying for it -- the fees and investment
3 banker unless the UCC, the U.S. Trustee and the debtors all
4 consent. Otherwise we have to come back to court and people
5 can make their arguments as to why either the need for it or
6 the compensation structure is or is not professional -- is
7 or is not, excuse me, appropriate.

8 And then finally providing that the work product
9 of certain financial professionals, primarily FTI which as
10 of now is the financial professional, will be shared with
11 the ad hoc group of non-consenting states and governmental
12 entities group subject to appropriate protections. More on
13 this very important change later.

14 Fourteen, without -- now I'm back to the main
15 ones, not the mini-points on the order.

16 (Laughter)

17 MR. HUEBNER: Those I did number. There are only
18 16 of them.

19 Fourteen, without in any way minimizing the
20 importance of other parties to the case, neither the UCC nor
21 any of the other private or governmental entities or
22 existing ad hoc committees, the states have a vital role to
23 play. Your Honor has noted this from the bench multiple
24 times since this case started.

25 During the October 11th preliminary injunction

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1 hearing, and nobody needs me to remind the Court and you
2 certainly need me least of all, although no one had actually
3 objected or provided language to the voluntary self-
4 injunction, you told us, go back and work this out with the
5 states and get their -- get them comfortable and then come
6 back.

7 Your Honor also, and I have pin cites for the
8 transcripts if anybody needs them, Your Honor emphasized the
9 need for the debtors to provide the states with more
10 information, implicitly before coming back as we did on
11 November 6th.

12 Your Honor also addressed preliminarily some
13 musings on the allocation process and hoped that:

14 "There would be an understanding between the
15 states and the municipalities and localities throughout the
16 whole process that subject to general guidelines on how the
17 money should be used, specific ways to use it should be left
18 up to the states and the municipalities with guidance from
19 the states primarily," 175-24 to 176-6.

20 Finally, as to the lengthy October 11th hearing,
21 Your Honor expressed hope that once the difficult allocation
22 issues were addressed the actual public health steps taken
23 to correct and address the opioid problem would be "largely
24 left up to the states and municipalities so they can use
25 their unique knowledge about their own citizens and how to

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1 address them," 149-22 to 155.

2 Then we came back on November 6th. And after Your
3 Honor commended the parties on the progress in the case to
4 date, which was very nice of you by the way, the Court
5 emphasized that "Everyone here, including the consenting
6 states...needs to be thinking about...what I believe will be
7 a fairly neutral structure for a plan here." In fact, the
8 Court's final reflections on these plan issues was to
9 encourage all 50 states and the District of Columbia and the
10 territories and the Native American tribes to be a resource
11 and that "Each state reach out to the claimants in its state
12 and start discussing this crisis" -- crisis we added, you
13 just said this -- "to see if there's an equitable way that
14 the claimants within the state can get comfortable with how
15 it can be addressed," 57-10 to 13.

16 I actually have a few more quotes, but I'll leave
17 it at that.

18 Fifteen, we are most assuredly not agreeing to
19 seek authority to pay these fees as a thank you present for
20 supporting us at the injunction hearing, even though that
21 support likely significantly contributed to us prevailing,
22 an outcome that hopefully is already avoiding value losses
23 and will ultimately avoid value loss and expense many, many
24 multiples of the fees in question.

25 We are not doing it because we like the ad hoc

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1 group more than we like other creditors or groups. We're
2 doing it because we think it is in the best interest of the
3 estate.

4 And while I'm discussing the debtors' judgment,
5 which is what lead to this motion, the UCC cited in their
6 brief to several transcripts from Your Honor where Your
7 Honor appears to have articulated a less deferential
8 business judgment standard than that applied by many other
9 courts.

10 Other people cited the Second Circuit case in
11 Orion, which seems to have kind of a slightly different
12 articulation of the Court being an overseer of the wisdom of
13 the debtors. It actually specifically says that ascension
14 motions should not be mini-trials. They should actually be
15 sort of summary things that move the case along quickly.

16 And then the ad hoc committee cited a Supreme
17 Court case from six months ago tomorrow where the Supreme
18 Court states that when a debtor seeks to assume or reject an
19 executory contract "the Bankruptcy Court will generally
20 approve the choice under the deferential business judgment
21 rule," *Mission Product Holdings Inc., This Is Technology*
22 *LLC, 139 Supreme Court 1652, 1658 (2019)*.

23 It is not for me and I will not be doing it, to
24 tell the Court what standard to apply today. But happily it
25 is of no moment because the debtors believe that under any

1 of the standards the Supreme Court's potential deferential
2 business judgment, Orion's overseer of the wisdom or even
3 the transcripts that they found that seem to suggest that
4 you kind of look at it de novo, you know, we are very
5 comfortable with the request relief and the judgment and the
6 complexity that went into it is in the best interest of the
7 estates and should be approved.

8 Finally, sixteen, as I have told many parties and
9 I believe the Court in some cases more than once, the
10 debtors have long viewed this as a four-gates deal. Gate
11 One was agreeing to a settlement framework with a critical
12 mass of parties. Check.

13 Gate Two was memorializing that agreement in more
14 detail in an actual written term sheet. Check.

15 Gate Three is moving to an RSA stapled to a much
16 more flushed out version of that deal and term sheet whose
17 preconditions are massive amounts of diligence, structuring
18 and negotiation. That work has been progressing intensely
19 in the window created by the initial stay period.

20 And Gate Four is the confirmation hearing where,
21 if all goes well, that deal is authorized to close and will
22 close.

23 Therefore, I was in no way surprised or fussed or
24 embarrassed to see my own words from this very podium about
25 where we are at present with much work still to be done and

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1 uncertainty about ultimate outcome cited back to me at some
2 length in some of the objections.

3 Quite the contrary, we have been completely direct
4 and very forthright with all parties about both exactly
5 where we are and exactly where we are not yet. The debtors
6 believe that progressing the deal set forth in the term
7 sheet is critical and that it is absolutely in the best
8 interest of the estate to continue with the diligence
9 necessary to move this case towards Gate Three.

10 And that diligence and the work that we need to do
11 in the months ahead is extremely substantial whether or not
12 we pass exactly through the Gate Three whose structure is
13 outlined in the October 8th term sheet or some slightly
14 different one. It includes questions like, how much are the
15 IACs worth and should they be prepared for sale; how do we
16 establish appropriate security interests and covenants with
17 respect to the Sacklers and the IACs; how do we get the most
18 money into the estate the most quickly; exactly which
19 Sacklers are guaranteeing the \$3 billion minimum
20 contribution and how will payments be allocated among them;
21 what covenants and protections do we get from a far flung
22 family for a multi-billion-dollar multi-year deal; how much
23 are the Sacklers worth and where are their assets.

24 As these questions and dozens and dozens of others
25 make clear, there are huge amounts of work to be done on

1 this hugely complicated multi-billion dollar, multi-
2 continent, multi-country, multi-year deal or whatever
3 variant of it we end up with that presumably will still
4 include billions of dollars paid in from the shareholder
5 parties.

6 It is in light of all this that it is and remains
7 the debtors' view that three entities each need to be deeply
8 and primarily involved in pushing us all forward, pushing
9 the family, the shareholders, for diligence, disclosure,
10 granularity, covenants, collateral and other protections.
11 These three parties are:

12 One, the debtors, the ultimate fiduciary for all,
13 and the indisputable owner of billions of dollars of
14 potential claims against the related parties;

15 Two, the UCC, an undisputed fiduciary for all
16 unsecured creditors; and

17 Three, the states who along with other
18 governmental entities are participating via one of the ad
19 hoc committees, the UCC itself, or the non-consenting states
20 group and with whom the ad hoc committee has agreed to share
21 substantial financial information analysis produced by their
22 financial professionals.

23 At the end of the day, Your Honor, I think there
24 is one core question for this hearing and it's not actually
25 particularly evidentiary: Is it acceptable business

1 judgment for the debtors to pay the fee for this third
2 party. It's expensive. It might be duplicative. And are
3 they really doing anything that the debtors and the
4 creditors' committee cannot do themselves, and why should
5 the estate spend what might end up being tens of millions of
6 dollars on that.

7 It's a fair question, but the debtors believe that
8 the answer is better than the question. At base, it is the
9 debtors' informed view and judgment having lived these
10 litigations and other related matters for years that the
11 states have power and negotiating leverage and sovereign
12 rights that they alone can wield against the shareholder
13 parties in addition to the rights and leverage and claims
14 and threats of others.

15 Moreover, unless the supporting states get all the
16 information they need from the related parties to proceed
17 through the next gate, they will neither continue with the
18 deal themselves nor be willing or able to bring any other
19 parties on board or to undertake the various tasks that the
20 Court has suggested to them might be quite critical once we
21 get to the implementation phase.

22 Simply stated, the debtors believe -- and this is
23 really counsel and judicial judgment more than witness
24 testimony -- that this case will be resolved faster and
25 better if today's request is granted. If the states are to

1 play the meaningful role that this Court often sua sponte
2 has raised and suggested, they of course need to be
3 comfortable and fully informed as to facts, options and
4 structure.

5 As everybody knows, Purdue and the Sacklers and
6 the opioid crisis are issues that are very, very public and
7 very material and very controversial in many states. And
8 those states have been abundantly clear that other entities
9 that they have not chosen and whose boards they cannot vote
10 whether or not they are fiduciaries will not be doing that
11 work for them.

12 Moreover, the irony of this hearing is worth a
13 moment of digression. The debtors unfairly and wrongly have
14 repeatedly been accused in the press and by certain parties
15 in these cases of trying to protect the Sacklers or trying
16 to inappropriately use the debtors' bankruptcy as a shield
17 for the Sacklers.

18 While all of that is emphatically false and
19 happily is materially dying down as weeks and weeks of fact
20 on the ground give it the lie that it is, what the debtors
21 are here today trying to do is further empower a large
22 number of State Attorneys' General. And, indeed, all of
23 them, because of the information sharing to which they have
24 agreed, the debtors are seeking to underwrite the very
25 entities who have been their most fierce, their most

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1 bitterly antagonistic and their most long-standing litigious
2 stakeholders because the debtors believe that that will get
3 us all to consensus better and faster.

4 Moreover, Your Honor, if you want to think about
5 it from a different angle, you could really argue, although
6 it's not actually what animated us today, that this motion
7 is, in fact, a very fair trade for the injunction willing
8 (sic) because the states alone have police powers that are
9 potentially not automatically stayed.

10 But this Court ruled, over the fierce objection of
11 24 of them, that they do not in this unusual case get to
12 continue their extent police and regulatory power litigation
13 in their own preexisting courts of choice because we
14 correctly prevailed in arguing that that would have been
15 insanely value destructive for all.

16 So perhaps another reason the motion should be
17 granted is that as part of being compelled to proceed in a
18 unitary organized fashion in this one court, they get
19 assistance in their efforts to work towards a solution in
20 the common interest. And if this is part of the bargain
21 that net avoided hundreds of millions of dollars of expense
22 and fees and lost value, it seems pretty sensible.

23 Your Honor, those are the 16. Let me now switch
24 gears and come at things from two more angles.

25 Number one is the O'Connell deposition. So like

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1 others, I, you know, sort of opened my bleary eyes and went
2 through that little mini four on a page transcript. And I'm
3 going to guess that there are probably a few things that the
4 people who took the deposition are pretty excited about, or
5 maybe a little excited about. Since I actually lived all
6 this, I actually don't think it's exciting at all. So since
7 I'm at the podium I'm going to take a few minutes to address
8 some of that.

9 One of the things that came up in the deposition
10 was that Mr. O'Connell did not know and had no answers or I
11 -- if he had them I don't think they were very good -- as to
12 why if the supporting states were supporting us on the
13 injunction that was not laid out in our informational brief
14 and was not even in our initial injunction papers. Like if
15 they were your big supporters and that was always part of
16 the deal, where is it in the documents. A totally fair
17 question. Since Mr. O'Connell is an investment banker, it's
18 not a huge surprise that he didn't know the answer.

19 I'm not an investment banker and I do know the
20 answer, which is the way it was supposed to work was we were
21 supposed to go into Chapter 11, finish a term sheet, know
22 that we had a deal, and then we would proceed with the
23 injunction and they would be supporting us. Unfortunately,
24 as Your Honor remembers perfectly well because we had some
25 pretty sharp exchanges with some of the states about it,

1 some of the states took the bankruptcy filing as the
2 acceleration gun.

3 And what happened as soon as we filed was that we
4 were getting literally battered, just battered multiple
5 times a day with emergency hearings and sua sponte orders
6 and deposition notices and things like that. And we simply
7 couldn't survive and wait to proceed with the injunction.
8 So we ended up radically accelerating the injunction papers
9 being filed. People like didn't go home from the Sunday we
10 filed for Chapter 11 until I think it was the Thursday maybe
11 that we filed the injunction papers. We didn't have a term
12 sheet yet. We had to flip the order.

13 And the supporting states said to us, we know we
14 said we would be supporting you, but right now all we have
15 is this three-bullet oral settlement framework. When we
16 finished the term sheet, that's when you'll see our support.
17 So the second we got the injunction papers filed, we went
18 back into the chamber with them and worked on the term
19 sheet, which was ultimately agreed to on October 7th and
20 filed on October 8th, and about like a minute after that
21 they filed their statement of support for Thursday's
22 injunction hearing.

23 It's actually, frankly, a lot like what we did
24 with the creditors' committee, which actually the minute we
25 finished that one on October 7th we dragged ourselves into

1 the next conference room and the committee said, you know,
2 we're not going to take a position supporting you on the
3 injunction until you reach a stipulation with us. And that
4 wasn't even done until the Friday morning of the hearing,
5 and then moments later I think they called the Court and
6 said, we're going to be supporting the debtor on the
7 injunction.

8 So there's no Perry Mason moment there. The
9 reason you didn't see the supporting committee -- the ad hoc
10 committee support is we just weren't done yet and they were
11 saying, finish the term sheet so we know that we actually
12 have something that is, you know, much more flushed out and
13 real, and then we will step up.

14 And just for what it's worth, lawyers shouldn't
15 testify, but this kind of bugged me a little bit. So one of
16 the other things I did in the middle of the night last night
17 was I actually went back and looked at the earlier drafts
18 that we had been sending them pre-filing starting in August
19 and every one of them of course, because it was the core of
20 the deal, says you will support us at the injunction. You
21 will fully stand down.

22 So I'm hoping they're not going to say, like we
23 didn't think to ask for that till afterwards and we agreed
24 to pay their fees not having thought about it because that
25 would actually be both actually insulting because they're

1 actually making me a moron, and it would also be, in fact,
2 totally false.

3 (Laughter)

4 MR. HUEBNER: Two, there seemed -- you may hear
5 later, Your Honor, about some kind of blocking position
6 testimony from yesterday. There appeared to be a brief
7 flurry of what looked to me in a blurry eyed as sort of
8 excitement that, you know, did these guys have a blocking
9 position, like do they own 33.335 percent of the debt. And
10 the answer is, we have no idea because nobody knows that,
11 like is that a Perry Mason moment?

12 Look, in a totally simplistic case with a known
13 quantum of debt, where you can calculate percentages, people
14 buy 34 percent of the debt have a blocking position and
15 sometimes they get maybe more than they should deserve
16 because of that.

17 But happily for us those of us in the room and
18 especially those of us in a robe are infinitely more
19 sophisticated than that. There are lots of ways to have
20 leverage in a case. There are lots of ways to have a
21 blocking position in a case. We weren't litigating the
22 police power injunction against private entities. We were
23 litigating against governments. We weren't here on November
24 6th figuring out a way to get the injunction consented to
25 with private parties because they're automatically stayed.

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1 On April 8th when I doubt we will be done with
2 this case and we need an injunction extended, we're not
3 going to be begging the private parties because, candidly,
4 they're automatically stayed and they will file claims and
5 we'll go through them. Governments are just different. And
6 when it comes to police power and regulatory -- by the way,
7 at subsequent hearings I may be saying they're very
8 unimportant. Let me just be very clear about that. I just
9 want to be up front.

10 (Laughter)

11 MR. HUEBNER: I know you don't like when people
12 reserve their rights. I'm reserving my rights to say
13 they're not as important as they think they are when they
14 disagree with us. Okay.

15 (Laughter)

16 MR. HUEBNER: Next, another thing they seemed
17 excited about, isn't it true, Mr. O'Connell, this is like
18 from a TV show, isn't it true that RSA parties often provide
19 financing to debtors or consent to the use of cash
20 collateral. Yeah. Like it's true. When that's the nature
21 of what is at issue in the case and when a debtor is running
22 out of money and can't pay its bills and needs financing,
23 that's the trade. When a creditor has a lock on cash
24 collateral and you can't use a penny of your own cash
25 without their consent, that's the trade. I just can't find

1 a Perry Mason in this one either.

12 The last kind of Perry Mason moment, which wasn't,
13 was when they showed Mr. O'Connell a one-page piece of paper
14 that purported to be a Chapter 11 budget. Mr. O'Connell,
15 and I think what they were saying was this has a lot of
16 money on here for these ad hoc people, but doesn't even have
17 as much money as they get for the UCC, like, explain.

18 Again, you know, they will describe it and Mr.
19 Kanestry (ph) will help because, you know, I don't -- I'm not
20 like perfectly conversant, but my understanding both at the
21 deposition and then last night was that this is a completely
22 outdated piece of paper from June that probably never -- I
23 don't even know if it should have been put in the data room.
24 And this was one of the many iterations of the budget that
25 was done over the many months. Obviously, November 19th --

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1 my sister's birthday -- is actually very far away from June
2 in the life of a Chapter 11 case and there are many things
3 on there that have no relevance at all and are clearly
4 totally outdated and irrelevant.

5 So, you know, again, obviously I will leave it to
6 them to advocate for what they got out of yesterday's
7 deposition. But, you know, I sort of jumped on it as soon
8 as I could and I didn't really see very much that I thought
9 was too awesome.

10 Okay. So now I want to do one last thing. There
11 are three arguments that were made in the papers that I
12 actually want to hit quite directly which I think hopefully
13 will be helpful to the Court.

14 One, there is no signed binding RSA. It has
15 surface appeal. Your Honor, look at the term sheet. It's
16 not even signed. The only thing these guys and ladies ever
17 put their signature to was their fee letter. Show me like
18 an actual signature of anybody other than on the fee letter.
19 This is outrageous.

20 Yeah. It's actually not. In fact, I actually
21 find it singularly unpersuasive.

22 One, as this Court well knows probably better than
23 anyone in the room, no RSA in fact truly and irrevocably
24 binds its signatories. In fact, RSAs invariably have
25 multiple outs. And as Your Honor has seen for decades, they

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1 not only have multiple outs, they often have multiple broad
2 and discretionary outs, like the plan and all plan documents
3 and every other document in the history of the universe must
4 be acceptable to us in our sole discretion, or they have
5 milestones like you will file a plan by Thursday.

6 And things like that, every one of them is a
7 discretionary out. And Your Honor has presided over God
8 knows how many cases where milestones got extended again and
9 again and again, or courts said, I'm not going to approve
10 those milestones. You know you can't make those and you're
11 just giving them a hidden discretionary out.

12 So I think that the objectors' focus on the
13 absence of a signed RSA is pretty close to a full on red
14 herring because RSAs are very often of gossamer spun.

15 Rather, I would suggest that the ad hoc committee
16 has been and has acted bound to this deal to date as least
17 as much as a distressed bondholder is bound to a deal under
18 a traditional and highly porous RSA.

19 But don't take my word for it, Your Honor, because
20 we actually went back and pulled a whole bunch of RSAs where
21 our colleagues at Akin Gump were getting their fees paid as
22 counsel to ad hoc groups or creditors. And guess what?
23 Those RSAs consistently have broad and varied termination
24 rights and outs based on documentation consent, milestones
25 and even diligence outs.

1 So the notion that wonderful, magical RSAs bind ad
2 hoc committees and that is what justifies their fees being
3 paid, and only these foolish Purdue debtors forgot to bind
4 their ad hoc group is respectably farcical. Most RSAs have
5 multiple holes large enough to drive a truck through and
6 very often bondholders exit through those holes after
7 getting a whole bunch of fees paid.

8 Two, in this case which does not actually happen
9 very often it is the debtors who have total unmitigated
10 unqualified optionality. We can terminate paying the ad hoc
11 committee's fees at any time for any reason, period. If
12 Purdue concludes that it is no longer in the estate's best
13 interest to pay these fees, we send them a one line email:
14 Dear Ad Hoc, it's over, the debtors.

15 Now that's pretty rare and it actually explains
16 we're not actually fool hearty at all. We signed the fee
17 letter pre-filing knowing that it was about to become a pre-
18 petition, unsecured, unassumed and unenforceable contract,
19 and we would then make the judgment if we got to where we
20 needed to go to file an assumption motion. We then had the
21 injunction hearing and got the term sheet done and saw the
22 facts on the ground and made the decision to proceed.

23 But today doesn't actually lock us into anything.
24 It authorizes us to pay their fees for only so long as we
25 see fit.

1 In addition --

2 THE COURT: How can -- can I -- how does that tie
3 into the new provision that says the capped prepetition
4 amount is tied to the earlier of an RSA or a plan?

5 MR. HUEBNER: Sure. That's a great question, Your
6 Honor.

7 So I would say it like this. I'm just a little
8 bit on my feet because it wasn't addressed specifically.
9 But if we terminate before getting to an RSA with them, it
10 never gets paid.

11 THE COURT: That's clear. Yeah.

12 MR. HUEBNER: If we terminate before getting to a
13 plan with them, it's never paid. I guess your question is
14 what if we terminate and then later we end up doing a deal
15 with them even though they can't get paid for anything in
16 the interim, can they submit a bill for \$1.49 million for
17 their prepetition.

18 You know, I don't know, candidly.

19 THE COURT: I mean, in practical terms you
20 probably would have it in that deal.

21 MR. HUEBNER: Yeah. Well, I didn't want to be
22 cheeky, but I was going to say if we end up getting to a
23 global deal later and there is an interregnum, I'm pretty
24 confident there's going to be a larger discussion and a
25 resolution of what happens with the fees, which by the way

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1 is perfectly consistent with even Akin Gump's own pleading
2 which is like, come back when you have a deal and then we'll
3 be much more favorable. We acknowledge we get fees paid
4 like this all the time. The question is just do the facts
5 justify them.

6 So I'm getting -- like -- let me say this. If our
7 worst problem is figuring out what to do with this 1.49
8 million when we're otherwise all singing Kum Ba Yah, we're
9 in a pretty fabulous place and I'm sure we will figure
10 something out.

11 What I actually thought you were going to ask --
12 and shame on me for guessing wrong -- is if you have a flat
13 unconditional right to terminate, why do you also have a
14 right to terminate if they become less representative or if
15 they don't do an RSA by a date certain. Like if you have a
16 flat one, why do you have extra ones.

17 The answer is because they are statements of
18 intent that are important to us. Even in this -- at the
19 time on September 15th totally optional fee letter, this was
20 a let us be totally clear, if you (indiscernible) are not
21 the representatives that we thought you were or you're not
22 moving towards an RSA with us, let there be no mistake. So
23 those are just additives to a total discretionary at any
24 time termination right.

25 Three, while there is in fact not yet a signed RSA

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1 and there also isn't a signed term sheet, because candidly,
2 you know, we thought about doing a heads of agreement for
3 the term sheet. I've been through this rodeo before.
4 They're just kind of foolish because when a term sheet
5 itself -- maybe not much more foolish, ironically, than RSA
6 which has a ton of outs.

7 When a term sheet itself still has lots of TBDs as
8 term sheets always do, you know, you could slap something on
9 that says, you know, we all agree in good faith that we will
10 pursue this term sheet. And it's worth something. Filing
11 it on the docket as an agreed term sheet, filing a pleading
12 a few minutes later which they did -- I don't remember if it
13 was a few minutes, but soon thereafter saying we have agreed
14 to the attached term sheet and because of that here is our
15 objection to the injunction, standing up against the other
16 half of the country at the hearing and saying, we stand down
17 and we actually support you being bound, I actually think
18 that those facts on the ground are much stronger evidence of
19 support than a piece of paper on a porous RSA.

20 We're also, though, just to leave no stone
21 unturned, progressing a stipulation with the ad hoc
22 committee that, in fact, will have a variety of covenants
23 and agreements a lot like the UCC stipulation which, again,
24 will be yet another thing that looks a lot like an RSA and
25 will add even more to this sort of package of commitments

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1 from the ad hoc group.

2 And let's not lose sight of sort of the slightly
3 bizarre twist from today's hearing. The UCC -- and I
4 understand why they did it because they're not on board with
5 the deal yet and that's totally fine. They shouldn't be.
6 They were -- had been formed a week earlier -- demanded as
7 part of their October 11th stipulation that we adjourn for
8 four months, the time table we were originally on, to sign
9 an RSA that took us to Gate Three with the ad hocs.

10 Now they're saying, you don't have an RSA. That's
11 an outrage. You can't pay their fees. Well, it kind of
12 seems like a little bit unfair to do both of those things.

13 So, look, nobody knows, nobody, certainly not me,
14 where this case is going to end: Will it be the exact deal
15 on the term sheet, a variant or improvement of the deal on
16 the terms sheet, or a different deal. And if I got up and
17 tried to say, the deal on that term sheet, see you at the
18 closing, you would think I was either delusional or a
19 mendicant.

20 But what I do know is that the substantial work
21 that has been done to date and needs to be done many hours a
22 day almost every day for the next few months by each of the
23 UCC, the debtors and the ad hoc committee and other parties
24 as well for sure has been and will continue to be essential
25 to progressing these cases.

1 Your Honor, as a reminder, RSA stands for
2 restructuring support agreement. Let's just take those for
3 a second. I'm guessing we can stipulate that we're in a
4 restructuring.

5 I think judicial notice is pretty clear and I
6 don't think it could possibly be disputed that we have
7 gotten substantial support from the ad hoc committee to
8 date, both in terms of the injunction hearing and the term
9 sheet. And if we don't keep getting the S for support, we
10 will stop paying their fees, period.

11 A is for agreement which, again, when you combine
12 the fee letter, the term sheet, the injunction pleadings,
13 their positions in court and the coming stipulation, we
14 think that that three-dimensional agreement is actually
15 worth at least as much as many of the Swiss cheese two-
16 dimensional agreements that are actually called RSAs.

17 Argument Two, and I'm only addressing three, the
18 ad hoc committee lacks fiduciary responsibilities to the
19 estate. The UCC and the individual objectors both argue
20 that the payment of the ad hoc committee's fees is
21 inappropriate because they are not a fiduciary to the
22 estate.

23 I just don't get this one. We all understand and
24 agree that they're not fiduciaries to the estate. Nobody
25 has ever suggested to the contrary. That's just not the

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1 test moving to approve the fees of a creditor under 363 or
2 365 or 503. Creditor groups other than UCCs never have
3 fiduciary duties to the estate or all creditors. Although
4 strangely enough, this may be the first case in history
5 where the ad hoc group actually, may actually have fiduciary
6 duties to almost everybody because they're all 48 of the 50
7 states -- well, 47 because Arizona is sort of solo right now
8 -- and they actually are the representatives --

9 THE COURT: What are the other two?

10 MR. HUEBNER: What's that?

11 THE COURT: What are other two?

12 MR. HUEBNER: Kentucky and Oklahoma who have --

13 THE COURT: Oh, they have their own deal.

14 MR. HUEBNER: Wait. Did I misspeak?

15 UNIDENTIFIED SPEAKER: No. That's right.

16 MR. HUEBNER: Yeah. Thank you.

17 (Laughter)

18 MR. HUEBNER: I would like to thank the peanut
19 gallery for that --

20 THE COURT: Because they had previously settled.

21 MR. HUEBNER: Yes. Exactly.

22 THE COURT: Okay.

23 MR. HUEBNER: I don't want to over speak for them.
24 We certainly did a deal with Oklahoma in the months before
25 the filing. I believe there was a deal with Kentucky, but I

1 don't want to ever be viewed as speaking for a state
2 government.

3 THE COURT: Okay.

4 MR. HUEBNER: So, you know, these sovereigns
5 actually kind of are fiduciaries for at least 48, 50 or so
6 of the United States. So they're actually fiduciary-like
7 even if they're not remotely fiduciaries the way that the
8 debtors and the committee are.

9 I'm going to skip some stuff because I'm talking a
10 lot, and let's go to Argument Three.

11 The debtors' request will result in unlawful
12 disparate treatment of similarly situated creditors. The
13 UCC and individual objectors and other parties have also
14 objected that this is unlawful because of disparate
15 treatment.

16 I'm going to be quite brief on this one. The
17 debtors' motion plainly has nothing to do with the ultimate
18 treatment of unsecured creditors under a plan. Rather, the
19 debtors' motion seeks authorization to use estate funds in a
20 way that we believe is helpful for all.

21 The objectors do not, and frankly they couldn't
22 because there is no case law that says that, cite to a
23 single case in support of the notion that paying
24 professional fees to a group of creditors during a case is
25 unlawful disparate treatment. And Akin Gump is actually

1 pretty lucky that there is no case law that says that.

2 Quite the contrary, they expressly concede that
3 paying such fees is permitted in various circumstances
4 including under 363 and 365. The only question is, is it
5 justified under the facts. So it can't be both
6 categorically unlawful as disparate treatment and totally
7 okay as long as it's justified under the facts at the same
8 time. Right. You can look at their footnote that has all
9 the RSAs that they honestly cite and say this is done all
10 the time if the circumstances are right.

11 But here's the kicker on this one. The ad hoc
12 committee is not getting paid on the prepetition claims of
13 each of its ten members. It's getting paid for the
14 committee's post-petition work in advancing the ball for the
15 large group that they speak for and with their information
16 sharing hopefully advancing the entire case.

17 And let me say just one semi-last thing from a
18 totally different angle. I want to engage in the following
19 thought experiment because it's actually quite important
20 because it's actually a thought experiment that was urged on
21 us by people.

22 Assume for a moment, Your Honor, that right after
23 we won at the preliminary injunction hearing we turned to
24 the supporting states and we said, thanks so much for all
25 the support at the injunction hearing. That was really

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1 terrific of you and we might actually not have prevailed
2 without you. But now that you did that, we're actually not
3 going to honor our prepetition agreement with you because
4 it's unenforceable because we're in Chapter 11 now, and
5 we're not going to seek approval to pay your fees. But
6 thanks again. Now can we sit down and meet about how to
7 progress these cases and get a deal done.

8 We believe that this perfidious breach of trust
9 may well have made any consensual deal not only with that
10 group, but with many other parties as well in this case
11 impossible because this is a uniquely difficult case. And
12 our credibility and our integrity are among our most
13 valuable assets. When we give our word, we keep it. That's
14 also part of business judgment.

15 Moreover, while it is not the governing provision
16 here, the debtors believe that the relief we are seeking, in
17 fact, is quite consonant with the policies underlying 503(b)
18 because the ad hoc committee is working to grow the pie for
19 all; the stand down of their own litigations that preserve
20 estate value for all; the commitment to pursue a value-
21 maximizing structure for a global resolution; assisting to
22 secure at a minimum a \$3 billion contribution with upside
23 from the shareholder parties. All of this work is being
24 done while the ad hoc committee has no idea what the
25 ultimate allocation or percentages or recoveries of their

1 own members might be.

2 So, Your Honor, in conclusion, and now this is in
3 conclusion, I think the record more than demonstrates and
4 the debtors firmly believe under any level of deference or
5 lack of deference or standard of review that the
6 reimbursement agreement will benefit the debtors' estates
7 for the many important reasons I have discussed.

8 Six months ago tomorrow in *Mission Products*
9 Holdings the Supreme Court of the United States stated as
10 follows:

11 "Section 365 enables the debtor or its trustee
12 upon entering bankruptcy to decide whether the contract is a
13 good deal for the estate going forward. If so, the debtor
14 will want to assume the contract fulfilling its obligations
15 while benefiting from the counterparties' performance. But
16 if not, the debtor will want to reject the contract
17 repudiating any further performance of its duties. The
18 Bankruptcy Court will generally approve that choice under
19 the deferential business judgment rule."

20 While we are aware that the fees at issue are not
21 insubstantial, the debtors believe that authorizing us to
22 honor our agreement to pay them, only for so long as we
23 believe that it makes sense to do so, and with all of the
24 bells and whistles and review rights and objection rights
25 and judicial oversight in the proposed order is the right

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1 deal at present and is in the best interest of the estates,
2 and we ask that the motion be approved.

3 THE COURT: Okay.

4 MR. ECKSTEIN: Your Honor, good afternoon I guess.

5 THE COURT: Good afternoon.

6 MR. ECKSTEIN: Kenneth Eckstein of Kramer Levin on
7 behalf of the ad hoc committee of governmental and other
8 contingent litigation claimants.

9 Your Honor, I'm happy to proceed and supplement
10 Mr. Huebner's extensive and I think comprehensive
11 presentation on the motion, but I wanted to ask Your Honor
12 whether you would prefer to hear the objectors first and
13 then have me --

14 THE COURT: Well --

15 MR. ECKSTEIN: -- respond to --

16 THE COURT: -- it was --

17 MR. ECKSTEIN: -- some questions.

18 THE COURT: -- extensive and comprehensive. I'm
19 not sure what, you know, I have -- I have your pleadings.
20 You laid out in that pleading the different roles that the
21 professionals play. So I'm not sure there's anything really
22 to add other than to respond to points that might be raised
23 in opposition.

24 MR. ECKSTEIN: That was my sense as well. The
25 only thing I will say, Your Honor, in addition to the

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1 pleading that we submitted last week -- and, Your Honor,
2 there is also submissions by, statements by each of the 23
3 states --

4 THE COURT: Right.

5 MR. ECKSTEIN: -- that are -- plus the five
6 territories that are supportive of the motion and are
7 supportive of the settlement framework and that specifically
8 acknowledge in those statements. And Your Honor may have
9 also noticed that there was a pleading submitted by the ad
10 hoc committee of dissenting states represented by Mr. Troop
11 also supportive of the motion.

12 And I thought it was noteworthy that while the
13 impeachment proceedings are proceeding today and while the
14 election is proceeding we actually found an issue around
15 which all 50, or at least 48 states can agree.

16 Your Honor --

17 THE COURT: I saw all those pleadings.

18 MR. ECKSTEIN: -- I'm happy to rise later and
19 respond to specific questions or comments that are made
20 after the objections.

21 THE COURT: Okay.

22 UNIDENTIFIED SPEAKER: Your Honor, (indiscernible)
23 as well.

24 THE COURT: Okay.

25 UNIDENTIFIED SPEAKER: Thank you.

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1 MR. HURLEY: Good afternoon, Your Honor. Mitch
2 Hurley with Akin Gump on behalf of the official committee.

3 Your Honor, I want to make clear from the outset
4 what the committee's objection is about and what it's not
5 about. The committee's objection is not to the
6 participation in these cases of the ad hoc committee of so-
7 called consenting states. The committee encourages that
8 participation and hopes that the sorts of contributions that
9 the debtors have said they believe the ad hoc committee will
10 make will be made. And we hope to work alongside them in
11 that regard.

12 Your Honor, this also is not an objection where
13 the official committee is taking the position that there
14 will never come a time in these cases where a non-
15 fiduciary's fees warrant payment out of estate property. It
16 may be the ad hoc committee's fees. It may be one of the
17 other seven, eight or nine ad hoc groups that also is
18 formed.

19 The committee's objection is based on our view
20 that under the law and the precedents it is clear that the
21 moment has not yet arrived where a non-fiduciary's fees
22 could be justified to be paid out of estate property.

23 Now we believe that that's true across the board
24 where we are in this case. We haven't got an RSA yet.
25 Obviously there is no, as Mr. Huebner discussed, new money

1 or secured financing that often accompanies a non-503(b)
2 payment of fees. I think what you do see across the board
3 in all of those cases though is a relatively broad creditor
4 or party in interest consensus behind a pathway that appears
5 like a promising way to a prompt exit.

6 In this case we don't have that at all. We have
7 many creditor groups that have looked at the settlement
8 framework and have said, it's interesting. We want to
9 examine it. It may be something that makes sense in these
10 cases.

11 Your Honor, that's what the ad hoc committee is
12 saying. They're not yet signed on to that deal. They want
13 to diligence it like everybody else. So we're not at that
14 stage, we submit, for any kind of arrangement. But this
15 particular arrangement that's being proposed, Your Honor,
16 the official committee submits is especially extraordinary.

17 The proposal is that for this one non-fiduciary
18 group estate property will be used to pay four separate law
19 firms for a single client, FTI plus two other financial
20 experts. And I'll get in a minute to the change that they
21 made to how Compass and Culture are going to be paid. But
22 to us it appears to be a distinction without a difference.
23 So you're really talking about seven professionals. And it
24 looks like they're going to try and hire an investment
25 banker to make it eight at some point in the future,

1 although they're going to come back with a different motion
2 for that.

3 So they are before Your Honor not just asking to
4 pay a non-fiduciary's fees in very unusual circumstances,
5 but to ask Your Honor to approve paying seven professionals
6 for a single client in very unusual circumstances.

7 Now Mr. Huebner said something suggested that it
8 would somehow be a breach of trust if these fees are not
9 paid. He made his promise. Of course, Your Honor, Mr.
10 Huebner knows as the Court does that the only thing Mr.
11 Huebner could promise was to make this motion.

12 And moreover, Your Honor, the ad hoc committee
13 that he was negotiating with when they came up with this
14 seven or eight professional arrangement is represented by
15 highly experienced and sophisticated counsel. They are in
16 the room today.

17 It cannot have been a surprise to them that there
18 could be headwinds for a motion of this kind at this stage
19 in the cases, particularly when you are insisting on seven
20 or eight professionals representing a single non-fiduciary.

21 The committee was prepared to be reasonable in
22 this, but no compromise could be reached before today. That
23 leaves the debtors in the unenviable position not only of
24 having to carry their burden of proving this is in the best
25 interest of the estates to pay a non-fiduciary at this stage

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1 in the cases, but to pay the fees of seven professionals for
2 a non-fiduciary at this stage in the cases. The official
3 committee submits they can't do it and they haven't done it.

4 I want to talk about the standard for a moment.

5 So Mr. Huebner referenced the Orion case which is a case
6 that Your Honor has yourself cited in describing how the
7 business judgment standard is applied within this Circuit.

8 According to Orion, "Bankruptcy Courts sit as an
9 overseer of the wisdom with which the estate's property is
10 being managed."

11 The Second Circuit in the Nastas (ph) case citing
12 Orion provided, "Assumption of a contract requires a
13 judicial finding up front that it was in the best interest
14 of the estate and the unsecured creditors for the debtor to
15 assume the contract."

16 This is not a deferential standard. It is a
17 standard that requires the Bankruptcy Court to step in,
18 examine the evidence and reach an independent conclusion
19 about whether the proposed decision is in the best interests
20 of the estate.

21 Now, when examining whether a proposed decision is
22 in the best interests of the estate, of course it is
23 necessary to consider, not just potential benefits, but also
24 potential burdens of the decision.

25 On the burden front, the Debtors' motion fails

1 completely with any evidence. The Debtors did not come
2 forward with any projections; that's how much they think
3 this is going to cost.

4 The ad hoc committee, in its papers, also didn't
5 submit evidence, a declaration or anything. But, in their
6 brief, they say that probably it'll be a million and half to
7 two million dollars just for the four law firms, per month;
8 another million per month for FTI and they don't say
9 anything about how much Colter and Compass are going to cost
10 going forward. Let's just assume, for sake of argument,
11 that it's \$3 million a month.

12 So if this goes on for say six months, we're
13 talking about probably close to \$20 million in fees over
14 that period of time.

15 And the question is what can we be sure, at this
16 stage of the cases, are the estates going to get in return
17 for that \$20 million. And the answer is nothing. Okay?

18 They refer to the fee letter to say that there are
19 some obligations on the part of the ad hoc committee here
20 but there really aren't.

21 What the fee letter says is that the ad hoc's
22 professionals only will get reimbursed if they do certain
23 things. They don't have to do those things. But, if they
24 want to get paid, they have to do work within the scope.

25 That scope includes doing the diligence that A lot

1 of other parties in here also want to do to try to evaluate
2 whether the settlement framework makes sense in these cases;
3 whether it's something that the parties really want to
4 advance to a final deal. That's part of it.

5 But this is really important. Part of it, and the
6 Debtors have been really up front about this, and the ad hoc
7 committee has been really up front about this, they except
8 the estates for pay for them, to negotiate allocation, their
9 groups against all the other groups, okay?

10 So that means, as a practical matter, Your Honor,
11 we could be in a position; I hope we won't, and I'm not
12 saying we will, but it's a risk, that this group of ad hoc
13 folks with their seven professionals are billing the estates
14 for six months or eight months, diligencing the case, try to
15 negotiate a deal that's acceptable to them and they can't.
16 And everybody else, but the ad hoc group, says we think we
17 have a path to exit. Here's the plan we want to proceed
18 with. The ad hocs, at that juncture, after getting 20, 30
19 40 million dollars of estate money can say, I don't like it.
20 And now not only am I not going to aid an early, an early
21 reorganization, I'm going to spend the next six months
22 fighting it.

23 Like I said, I hope that doesn't happen but it
24 could happen. And how do you avoid, how do you be sure,
25 that that doesn't happen in a case like this?

1 The code and the bankruptcy case law provides an
2 answer. So one way is through 503(b). You don't actually
3 pay the non-fiduciary's fees until they have actually been
4 able to come to the Court and demonstrate I actually did
5 what I said I was going to do.

6 The Court knows, at that point, and they can make
7 a judgment about whether that warrants payment.

8 Another possibility was with respect to an RSA,
9 new financing, new money; where there is some kind of
10 concrete commitment; with some kind of concrete steps that
11 are going to be taken, that people can get behind.

12 And, again, we're in a situation where there is
13 not one single party that has stood and said that it
14 currently believes the settlement framework is in the best
15 interests of the estates. Not the Debtors, not the ad hoc
16 committee. That doesn't mean it's not but we're not there
17 yet.

18 So that's part of the, I guess, the potential
19 downside that's you wind up spending a lot of money and
20 getting nothing from it.

21 But I want to talk a little bit about in the best
22 interests balancing, the benefits that the Debtors say go
23 along with granting this motion.

24 So they put them really in two buckets. There's
25 the buck of benefits that they say have already been

1 conveyed by the ad hoc committee and that bucket includes
2 advancing the settlement negotiations towards the framework,
3 supporting the injunction, obtaining disclosures from the
4 Sacklers, among others, and with respect to those items,
5 they say that, for instance, they believe that the ad hoc
6 committee support for the injunction was very important to
7 it being granted.

8 There's only person in this room that can answer
9 that question. But we'll assume, for the sake or argument,
10 their a hundred percent right about that.

11 And although it seems like there may be a little
12 bit of revisionist history about who was involved in getting
13 us as far down the field as we are, I think it was more than
14 just the ad hoc committee, but I'm sure they had a valuable
15 influence on that process and they also were helpful in
16 obtaining disclosures from the Sacklers and we appreciate
17 all of that work.

18 But assuming that everything they say about those
19 kind of cost benefits is a hundred percent accurate, Your
20 Honor, there's still past benefits. They are things that
21 have already been done and so that's what a substantial
22 contribution motion is for.

23 And, in fact, Your Honor, the U.S.,. Trustee said,
24 in their papers, look, it's too early to know whether or not
25 the ad hocs are going to make a substantial contribution.

1 And Debtors responded specifically by saying you're wrong.

2 We know already. They did these three things.

3 Well, if that's the case, Your Honor, that's what
4 503(b) is for, substantial contribution would be appropriate
5 for those kind of past benefits. They don't justify go
6 forward fees.

7 Now with respect to the benefits that the Debtors
8 say will accrue to them if the motion is granted going
9 forward, and I want to talk about them in two ways.

10 First, and I'm going to get to this in a minute,
11 these benefits, of course, are material to the extent that
12 the actual relief sought by the motion is necessary to get
13 them, right?

14 And the Debtors say something like this in their
15 papers that they bring this motion, something like "to allow
16 the ad hoc committee to participate and continue its role in
17 these cases". Okay.

18 And in a minute I'm going to talk about why I
19 think they haven't carried their burden to show that the
20 relief they seek is actually necessary to get any of these
21 benefits.

22 But I want to go through them quickly. These are
23 the kind of go forward items that we've heard Mr. Huebner
24 discuss.

25 So first is continuing to gather discovery from

1 the Sacklers. We encourage them to do that. We hope they
2 will alongside the official committee alongside the non-
3 consenting estates committee and a lot of other parties, who
4 all also are going to be doing that.

5 The official committee has a stipulation. The
6 non-consenting group is working on a stipulation that would
7 get them access to the same information.

8 We welcome the ad hoc committee doing the same
9 thing as well.

10 But there are others that are working on the
same thing.

11 Using their police powers to "leverage" a better
12 deal from the Sacklers. Of course, the ad hoc committee
13 members aren't the only members, constituents in this case
14 that have police powers. The constituent members of the
15 non-consenting group to some of the members represented on
16 our -- as I've -- on our committee do as well now and, to
17 some degree, it's really the non-consenting estates that in
18 a way would have more credibility about trying to increase
19 the value of the settlement because, unlike the ad hoc
20 committee, they've said, we're not agreeing to this unless
21 it gets better.

22 So, there will be help there even if for whatever
23 reason the ad hoc committee decided they weren't going to
24 continue based on this motion which is, I'll get to in a
25 second, I think is implausible.

1 They say that is saves an administrative burden to
2 have the ad hoc committee involved and they say without the
3 ad hoc committee, they would have to communicate separately
4 with thousands of municipalities and tribes.

5 But, Your Honor, at the same time, they say it's
6 the PEC speaks for those thousands of administrative -- of
7 municipalities and tribes., right? I mean, that's why the
8 ad hoc committee is helpful is because the PEC is on it and
9 they contend, I don't know whether it's true or not, but
10 they contend that the PEC is the voice for those thousands
11 of municipalities. Obviously the PEC isn't going to disband
12 depending on what happens with this motion.

13 In addition, they say they would have to work with
14 dozens of different States, 24 of them are organized in a
15 different group, 10 States of privately engaged with Kramer
16 Levin. So, there are -- the States are organized in other
17 ways in addition to the ad hoc group.

18 And then finally they want the ad hoc group to be
19 involved, to be able to turn the settlement framework into a
20 confirmable plan.

21 Again, we're just, you know, in the official
22 committee's view, not close to being -- having a consensus
23 of creditors that are ready to say it's time to move this to
24 a confirmable plan. I think everybody wants to do what the
25 ad hoc committee is saying it's going to do, to learn more

1 about the settlement framework and decide whether it makes
2 sense to advance it to a confirmable plan.

3 And there is a concern among some quarters that by
4 agreeing to pay fees for a party that at least has suggested
5 it might support the framework that kind of puts the thumb
6 on the scale in that direction, it may be the right outcome
7 eventually but I think that determination is still a long
8 ways off.

9 Now I want to turn to the question -- and, again,
10 we hope the ad hoc committee participates and we think they
11 can bring things to the table but from the official
12 committee's perspective it hasn't been shown -- not just
13 hasn't been proven, but it hasn't even been indicated that
14 it's plausible that this -- the relief that's on today, an
15 order requiring the estates to pay the ad hoc committee's
16 fees on a current basis, like maybe they could come back
17 later, but on a current basis that that somehow was going to
18 result in the ad hoc committee diminishing its participation
19 in these cases.

20 There's some reasons given for why that might be
21 true. I don't think they really withstand much scrutiny.
22 There's been a suggestion that states and municipalities
23 can't pay private attorney's fees and there'll be a lot of
24 evidence that that's not true.

25 You have the non-consenting group that has a law

1 firm working for it. They're not here asking for their
2 fees.

3 If you look at the exhibit for the by-laws of the
4 consenting group you can see that virtually all of the
5 municipalities have engaged private counsel one way or the
6 other. So that doesn't seem likely.

7 But I think more fundamentally you have -- when
8 you're thinking about the question of is the outcome of this
9 motion going to be dispositive about the participation of
10 the ad hoc committee, you have to look at what the ad hoc
11 committee and its constituents are themselves saying, okay?

12 The ad hoc committee filed papers on Friday and
13 one of the things that they said in their papers, it's a
14 theme that they've repeated and I've heard it repeated again
15 here by counsel for the Debtors, is this idea that they
16 believe because government entities don't sit on the
17 official committee that the official committee cannot
18 represent governmental units interests.

19 We've, the official committee, has assured and
20 reassured that we believe that is untrue. We recognize our
21 fiduciary duties to all creditors. Black letter law that
22 even -- that non-members enjoy that fiduciary obligation
23 just as much as creditor classes that are represented on the
24 committee.

25 We certainly have not, as suggested in one of the

1 submissions, reached a conclusion about allocation. We've
2 cited a study about the sort of 70 percent private versus 30
3 percent public breakdown, really to push back on the
4 contention that was made in the papers suggesting that the
5 ad hoc represents the majority of creditors. It hasn't been
6 determined yet and the official committee has, in no way,
7 shape or form, taken a position. But clearly it's not
8 certain on either side. That's the reason we've cited that.

9 We also have gone out of our way to add as
10 (indiscernible) members the representative of municipalities
11 and the tribes to get their perspective. So we are 100
12 percent confident that the official committee can represent
13 those interests.

14 But, for purposes of this motion, you have to take
15 at face value what the ad hoc committee is saying its
16 constituents believe and they say flatly that its
17 constituents believe the ad hoc committee is "essential"
18 because they believe the official committee can't represent
19 their interests.

20 Those interests, Your Honor, the constituents of
21 the ad hoc committee valued it multiple billions of dollars.
22 So the notion that if they really believe the ad hoc
23 committee is essential to representing those multi-billion
24 dollar valued interests that they would walk away from or
25 disband the ad hoc committee, the essential ad hoc

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1 committee, over a dispute about whether their fees are going
2 to be paid now or potentially later, is, in our view, highly
3 implausible.

4 And if the ad hoc committee is going to
5 participate in these cases anyway, how can it be in the best
6 interests of the estate to pay for what they're going to get
7 anyway when you've got the ad hoc committee saying, we have
8 to be here because the official committee can't represent
9 us.

10 They've been involved for months without having
11 their fees paid by the estates. I don't think there is a
12 scrap of evidence on the record that suggests that that's
13 going to change depending on the outcome of this motion.
14 And, again, we're not saying they'll never have an
15 opportunity to get paid by the estates. There may come a
16 time that they have actually done and supplied the benefits
17 they say they're going to. We can all come back here and
18 maybe, at that time, they satisfy 503(b) or otherwise. So
19 this isn't necessarily the end.

20 So I want to come back briefly to the specific
21 terms of the engagement that has been proposed. Again, you
22 know, we've obviously argued that we don't think really any
23 arrangement is appropriate yet.

24 But the arrangement that they're suggesting now is
25 particularly difficult for us to understand. There are four

1 law firms as I mentioned before, each of those four law
2 firms simultaneously represents a creditor of Purdue, either
3 in this bankruptcy or otherwise in respect to the opioid
4 crisis. That obviously is going to create some concerns
5 about conflicts going forward. It's clear that the ad hoc
6 committee itself has thought about that. Their by-laws
7 include a provision that frankly is unlike anything I've
8 ever seen that says that in the event that a member can
9 instruct one of those four law firms to take an action
10 that's contrary to the interests of the ad hoc committee
11 and, if that happens, their -- the other members can seek to
12 disqualify.

13 You know, obviously, it also says that they're
14 going to adhere to all of their professional obligations and
15 I'm sure they will but it's a very difficult situation for a
16 lawyer to be put in where that kind of conflict is
17 anticipated and it doesn't result in the usual agreement
18 which is the lawyer that represents two clients has to
19 withdraw from one of them. It's the opposite. It says, you
20 know, you can continue to act adverse to one another. You
21 just have to do it within the bounds of your professional
22 obligations.

23 I'm not quite sure what means or how that would
24 happen but it -- a difficult position at least.

25 Also a real risk that --

1 THE COURT: They don't get for that though, right?

2 MR. HURLEY: What's that?

3 THE COURT: They Don't get paid for representing
4 individual clients.

5 MR. HURLEY: That is -- that's the idea.

6 THE COURT: I think it's actually in writing in
7 the order.

8 MR. HURLEY: Right.

9 THE COURT: So it's not an idea.

10 MR. HURLEY: Correct. That would be the
11 requirements.

12 THE COURT: Okay.

13 MR. HURLEY: I think that in practice it would
14 difficult for them to be able to divide this up and they
15 actually say something about this that I think is pretty
16 relevant. By they, I mean the ad hoc committee.

17 At page -- paragraph 63 of the ad hoc committee's
18 submission on Friday, they say that if the motion isn't
19 granted there can be guarantee that the ad hoc committee
20 itself will continue to play the vital role it has played to
21 date or even exist in its current form if it is forced to
22 confront difficult issues of fee allocation among multiple
23 groups of creditors, the state, tribes and municipalities,
24 whose interests are frequently at odds.

25 So the ad hoc committee itself appears to be

1 acknowledging that it's going to be difficult some times to
2 know whether one of those four firms is doing something for
3 the ad hoc committee or for one of its members.

4 THE COURT: Is that how you read that statement?

5 MR. HURLEY: That is how I read that statement.

6 THE COURT: Really? I view it -- and this goes
7 back to something you said earlier which is that this motion
8 is largely, if not entirely, about setting the structure for
9 how the states deal with this case.

10 And the question for me is the cost of that
11 structure worth it or not.

12 And I think if you don't have that structure where
13 they actually do have a coordinated set of professionals you
14 run the risk, as they say in their pleading, of -- as
15 happened at the last hearing, someone just popping up and
16 saying, well, I'm from "X" county and "X" state and we
17 disagree with all of this.

18 And I think the more you have the structure, the
19 less that happens.

20 MR. HURLEY: Your Honor, and I -- the official
21 committee recognizes that dynamic and we have sought to be
22 reasonable. We have not been able to obtain a compromise
23 which is why I'm coming back to the specific engagement
24 they're asking Your Honor to adopt which includes the seven
25 professional firms.

1 THE COURT: Well, I'm not asking you to suggest
2 any or relate any settlement discussions. But if you're
3 just proposing an all or nothing approach, either grant the
4 motion or deny it, then you run a big risk that I'll grant
5 it.

6 So maybe you suggest how this could be improved.

7 MR. HURLEY: Sure. So we've had multiple kinds of
8 discussions --

9 THE COURT: No. No. You don't need to get into
10 the discussions --

11 MR. HURLEY: Oh.

12 THE COURT: -- just how does the committee think
13 this could be improved? Without waiving any of your rights
14 to object --

15 MR. HURLEY: Understood.

16 THE COURT: -- to the whole thing, of course.

17 MR. HURLEY: Understood.

18 THE COURT: All right.

19 MR. HURLEY: Okay.

20 So the official committee, as Your Honor knows,
21 has been very very focused on the emergency relief fund from
22 the beginning of these cases. And we have -- and I --
23 Mr. Preis may interrupt me to get some color on this because
24 he is more closely involved in the negotiations than I was,
25 but one of our thoughts was that the emergency relief fund,

1 if we could get adequate support from the ad hoc committee
2 for moving that forward promptly that that might be a way to
3 resolve the objection so that we have money going out the
4 door to the people that really need it in the opioid crisis
5 before we're talking about more and more money for lawyers.
6 That was an idea.

7 THE COURT: Okay.

8 MR. HURLEY: Arik, do you want to -- do you have
9 anything to add?

10 MR. PREIS: Can I address -- I know it's a little
11 bit irregular.

12 THE COURT: Well, and I get that point. If
13 there's some other point, I --

14 MR. PREIS: No. Well, Your Honor, we also --
15 obviously we had talked about, again without getting into
16 settlement negotiations.

17 THE COURT: Right.

18 MR. PREIS: But as a committee there are other
19 things that were important to us; things like should there
20 -- would we be okay with as the U.S. Trustee says
21 substantial contribution motions being filed.

22 Obviously that would have been fine with us as
23 well, you know, on a quarterly basis.

24 THE COURT: Okay.

25 MR. PREIS: The issue of -- just to go a little

1 bit further on what Mr. Hurley said, which is that instead
2 of tying the emergency relief fund to this motion, what we
3 had suggested was perhaps allowing a work fee for a certain
4 period of time, call it 30, 50, 60 days but then having the
5 emergency relief fund and this motion rise and fall together
6 at the same time, at some time in January the idea being we
7 understand that they need to do work for a while but, at
8 some point, at some critical juncture, that has to stop.

9 We also thought and talked about size, scope,
10 number of firms, number of -- you know, capping amounts.
11 None of those things -- you know, we addressed them all both
12 as a committee and during settlement negotiations. None of
13 which really got any traction. So --

14 THE COURT: Although I can that -- those points to
15 my mind are largely dealt with by the agreement for review
16 like all estate professionals are being reviewed.

17 MR. PREIS: So if I could just address --

18 THE COURT: I mean, I -- I'm not that proud of it
19 but I think I have the largest fee denial in history.

20 MR. PREIS: I object, Your Honor.

21 (Laughter)

22 THE COURT: And believe it or not it was Harvey
23 Miller's fee as an investment banker. So --

24 MR. HURLEY: I argued that motion.

25 MR. PREIS: It was one of my objections, Your

1 Honor.

2 MR. HURLEY: I argued that motion in front of you,
3 Your Honor.

4 THE COURT: I know. I remember.

5 MR. HURLEY: Anyway. Okay.

6 THE COURT: It wasn't because of bad work you did.
7 It was just, as you know --

8 MR. HURLEY: I remember.

9 THE COURT: -- it was on different grounds.

10 But --

11 MR. HURLEY: I remember. So -- okay. So if I
12 could just go through some of the changes that were made and
13 one of them is what you just referred to which is that now
14 there's going to be the opportunity for the committee to
15 review their --

16 THE COURT: Well, everybody.

17 MR. HURLEY: For everyone to review their bills.

18 THE COURT: Right.

19 MR. HURLEY: I mean, from the official committee's
20 perspective, of course, Your Honor I'm sure would gather not
21 satisfactory to us on this motion because our view on this
22 motion is that paying on a current basis in the first place
23 isn't appropriate and really what this would call for is
24 that as long as they can prove that they're acting within
25 the scope, which is somewhat vaguely defined, that the fees

1 are going to get paid subject to some other qualifications.
2 So it's not satisfactory to the official committee but
3 that's really fundamental to the objection we're making
4 today.

5 I do think that some of the other changes like
6 that they're saying that if they can't get paid for
7 duplicative work that's sort of to use your term ice in
8 winter, they can't get paid for duplicative work anyway. I
9 presume that would be sort of per se unreasonable if we
10 could identify things that were actually duplicative.

11 The notion of sharing FTI with the other states,
12 we think is a great idea. But it's limited in that they
13 only -- it's subject to areas where they have common
14 interests with the non-consenting group. Presumably, there
15 will be a fairly wide range of areas where they don't have a
16 common interest group. But, moreover, the official
17 committee has made the same offer to all the creditors
18 including the states that, to the extent it's consistent
19 with the privilege, they will have access to province to to
20 Jeffries (ph).

21 The pre-petition cap of fees at 1.5 million was
22 surprising I guess to me partly because they in their 1219
23 statement, the ad hoc committee acknowledges that it was
24 initially formed on the petition date. So it's hard for me
25 to understand how fees incurred before the client existed

1 could be subject to reimbursement and to the extent they are
2 that again seems like the 503(b) paradigm. It's like, well,
3 if it's already been done by definition rather than through
4 a motion of this kind.

5 THE COURT: Well, of the RSA paradigm.

6 MR. HURLEY: Or the RSA paradigm essentially.

7 THE COURT: And it doesn't kick in until you have
8 an RSA or a --

9 MR. HURLEY: Oh. The -- I guess it goes with a --

10 THE COURT: Well, you said you were going to
11 address the financial types beyond FTI.

12 MR. HURLEY: Yes. So the way the order reads is,
13 you know, it was a little confusing to me but it seemed like
14 what they're providing is, like I said, a distinction
15 without a difference for Compass and Colter. The motion
16 does currently seek approval of retention of Compass and
17 Colter on a current basis.

18 They then say in the same paragraph that describes
19 the application process for the law firms and FTI, later in
20 the paragraph they say no fees will be paid to Compass or
21 Colter except in connection with an order in connection with
22 an application referred to above which seemed to me like
23 they were just saying you have to make an application for
24 payment of Compass and Colter as you do with respect to the
25 other five.

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1 I mean, I don't know if that's what they meant but
2 it was certainly how it read.

3 THE COURT: I mean, I didn't --

4 MR. HURLEY: And maybe we'll get clarification on
5 that.

6 THE COURT: I didn't think -- I thought it was --
7 because that would have circular. I thought it meant that
8 they don't get paid except on a separate retention.

9 MR. HURLEY: Like a separate 363, 365 motion?

10 THE COURT: Well, maybe you can just clarify.

11 MR. HUEBNER: Yeah. Sure.

12 Your Honor, it's actually in the middle of those
13 two things. So let me just (indiscernible).

14 So, you know, we said four law firms, three FAs,
15 can we do something here. And they said well, two of them
16 aren't even working right now. And I said well, then, why
17 are we -- why does the initial draft of the paper say I
18 don't need these three FAs. And so what we ended up with is
19 it's a hybrid which is we don't need to come back and make a
20 new motion because that's a lot of expensive paperwork that
21 makes no sense.

22 It's not circular and it's not a typo. It's quite
23 in fact I think reticulated because they can't submit the
24 monthly bills if they start and get paid under the regular
25 monthly process. They can't get paid a penny unless at the

1 next succeeding quarterly application, when everyone else's
2 fees are up, there's an explanation of Your Honor they
3 started work 41 days ago. Here's why we need them. Will
4 you allow them to be paid?

5 And if the Court says you know what, this start up
6 was not appropriate, then I'm denying it all. They're not
7 getting paid anything and they lose the weeks that they
8 worked because they're not getting anything in the interim.

9 If you're -- I was just trying to save paperwork.
10 To make a separate motion for these two small firms when if
11 they start up they're not getting one red cent until -- one
12 penny until Your Honor has it front of you. That was the
13 compromise we thought was quite sensible.

14 THE COURT: Well -- so maybe the distinction then
15 is one that isn't necessarily in the code which is that --
16 well it is in the code but maybe not honored in practice
17 which is that as part of the reasonableness of them getting
18 paid is the reasonableness of them starting up work in the
19 first place.

20 MR. HUEBNER: No. And that's exactly -- that's
21 exactly why we did this which is we said to them you're
22 going to have to explain at the application if turns out
23 there was specialized work that I could not do alone, so we
24 restarted them and if Your Honor is not convinced and people
25 object, they will not get paid. That was the exact

1 approach.

2 But to file a whole new motion to say that when a
3 month or two later -- so we said no; just make them work
4 without current pay until the next application so we don't
5 have to another hearing and another motion and more wasted
6 money on nothing. I actually did (indiscernible)
7 respectfully is actually quite thoughtful and does the job
8 that Mr. Hurley --

9 THE COURT: Okay. All right.

10 MR. HUEBNER: -- and I and you are talking about.

11 THE COURT: Okay.

12 MR. HURLEY: Can I ask a clarifying question?

13 THE COURT: Sure.

14 MR. HURLEY: Would there be any limit to the
15 nature of the kinds of objections that could be made to
16 either the fact that they (indiscernible) or the amount that
17 you're proposing to pay them?

18 MR. HUEBNER: No. We -- no. To be clear.

19 Nothing in this order limits any party. As Your Honor often
20 says you can make a motion. But you see lots of heads
21 nodding that Mr. Hurley is right. If the objection is they
22 never should have started, this is wholly duplicative, and
23 I'm assuming the ad hocs will probably call a few people and
24 say, hey, just so you know, it turns out there's an
25 (indiscernible) tax question that we need this firm for that

1 FTI can't answer, so we're going to start them.

2 And then we will say or the committee will
3 certainly say we reserve our rights. We'll see you at the
4 application. And if we don't think it's justified, we're
5 going to be objecting on all grounds including that you
6 didn't them at all and that it was the least -- it was not
7 the most cost effective way.

8 But I am speaking for a bunch of people here. So
9 I'm looking for people to say like yes, Mr. Huebner, that's
10 sounds quite correct.

11 (Laughter)

12 MR. HUEBNER: It sounds generally correct.

13 (Laughter)

14 THE COURT: All right.

15 MR. HURLEY: So just I guess wrapping up the
16 number of professionals has been a bit of a concern to the
17 committee. And coming back to the question that Your Honor
18 asked about ways that we have considered that might make it
19 more reasonable. We named a few of them.

20 Another that we certainly considered to be more
21 reasonable if there was a, for instance, a single
22 independent law firm representing the ad hoc group and one
23 or two advisors shared equally among all the states. I
24 doubt we'd still be standing here if there was anything
25 closer to that. But that's not what we have despite

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1 everyone's I'm sure best efforts. We have the motion that
2 we have and we certainly object to that.

3 But just finally I guess I've been a bit of a
4 broken record on this the objection is not to the
5 participation of the ad hoc group. We have -- we are
6 looking forward to working along side them; just to their
7 payment of their fees and just the payment of their fees
8 now.

9 Arik, do you need to address something?

10 MR. PREIS: Yeah.

11 THE COURT: You can stay there. You don't need to
12 -- that mic will --

13 MR. HURLEY: Unless Your Honor has some questions,
14 I'll --

15 MR. PREIS: Your Honor, this is not by way of
16 argument but there are a number -- I don't want to really do
17 this but Mr. Huebner testified a number of times from the
18 podium earlier. He said a number of things that were
19 affectively directed at me and at us about things that we
20 did or that we took part in that I happened to know what
21 happened.

22 So I don't want to get into a he said, she said
23 with him but -- and I prefer just to leave it at that or I
24 can explain to you kind of some of the things he said that
25 were just factually incorrect to us.

1 So again I don't want to have to do this but I --
2 if you don't want to -- it's -- it doesn't change the
3 argument we made but there were some things he said that
4 were just --

5 MR. HUEBNER: Well, let me help for a second. I
6 certainly never planned to speak. I don't think I wrote any
7 of those down.

8 (Laughter)

9 MR. HUEBNER: Let me just --

10 MR. PREIS: Thank you.

11 MR. HUEBNER: Let me say one thing. To the extent
12 that I inaccurately or incorrectly described a conversation
13 with the FTCC stipulation, I apologize if I misspoke that
14 way Mr. Arik believes. I don't think they're germane and
15 relevant and I didn't write them down anyway. But I'll
16 figure out later where I might have misspoken.

17 MR. PREIS: Okay. Thank you.

18 THE COURT: All right.

19 (Pause)

20 MR. SCHWARTZBERG: Good afternoon, Your Honor.

21 Paul Schwartzberg for the U.S. Trustee's Office.

22 As Your Honor is aware, the Debtors moved under
23 363 and 365 to pay the professional fees of the ad hoc
24 committee.

25 The U.S. Trustee, however, believes that the code

1 has a more specific standard to pay the fees of an ad hoc
2 committee and that would be under 503(b)(3)(d) and (4) which
3 require the ad hoc committee to show a substantial
4 contribution before their fees can be paid.

5 And this insures that the Debtor received a
6 benefit from the ad hoc committee before its fees are
7 actually paid. And this is higher standard than the Debtors
8 just -- are suggesting and we believe if you contrast -- and
9 the reason for that higher standard becomes obvious we
10 believe when you contrast it to what you see with the
11 official committee.

12 With the official committee you're having a
13 neutral third party, the U.S. Trustee, appoint that
14 committee under 1102. The professionals of that official
15 committee are then vetted. They have to file applications
16 under 327 and make disclosures under Rule 2014 and this
17 governs to make sure there are no disqualifying conflicts
18 that those professionals have. And then their fees, of
19 course, are subject to 330 and 331, and those standards.

20 And the that committee has an obligation to the
21 estate and all creditors, a fiduciary obligation. But you
22 don't have that with an ad hoc committee. In fact, the
23 proposed order specifically disavows 327 and that rigorous
24 standard for the committee professionals.

25 So we believe that's the reason why the code set

1 forth 503(b) and a higher standard for the payment of the
2 fees of an ad hoc committee and we believe that there's a
3 specific standard set forth in the code and that that
4 specific standard is the standard that the Court is --
5 should follow and not the more vague and less direct
6 standard that's set forth under 363 and 365.

7 THE COURT: Okay.

8 MR. SCHWARTZBERG: And for that reason we object
9 to the motion.

10 THE COURT: Okay.

11 MR. NEIGER: Good afternoon, Your Honor.

12 THE COURT: Good afternoon.

13 MR. NEIGER: Edward Neiger of ASK LLP on behalf of
14 the ad hoc committee of individual victims in this case.

15 We are very grateful to be here. And before I get
16 into the substance of the objection which I assure Your
17 Honor after reading the briefs will be short.

18 Since this is my first time appearing or the
19 committee's first time appearing in this case, we were
20 hoping for a brief indulgence to tell Your Honor a little
21 about the committee and its members and, more importantly
22 how it can make a positive contribution to these cases.

23 The ad hoc committee is made up of a committee of
24 individuals that is made up of just eight members. Seven of
25 the eight are victims of Perdue. The eighth represents

1 victims of Perdue who at least for now wish to remain
2 anonymous.

3 Each member is active in helping people suffering
4 from addiction and their families and works tirelessly to
5 prevent others from suffering they way they did.

6 Our members include a former governor and attorney
7 general as well as leaders of national prevention awareness
8 and recovery organizations including the CEO of Center on
9 Addiction which is the successor organization to the
10 partnership for a drug free America, which I'm sure Your
11 Honor is familiar with. And they reach tens of millions of
12 people a year.

13 Other organizations that are members have
14 leadership roles and include team sharing, which is a
15 national non-profit organization dedicated to parents who
16 have lost children to substance abuse disorder; the
17 foundation for recovery, an organization dedicated to
18 removing social barriers and creating opportunities for
19 those seeking long term recovery; soldiers, a grassroots
20 organization helping individuals and families overcome
21 addiction, depression and homeliness and the voices project,
22 a non-profit organization, a national one, dedicated to the
23 eliminating the stigma associated with addiction.

24 Several of our committee members have suffered the
25 unthinkable; the loss of a child to overdose. One of these

1 members is here today and was sitting right next to me in
2 the last row. Her name is DeeDee Yoder (ph) and if I could
3 just tell her story very briefly, not to be dramatic, but to
4 be able to give Your Honor an idea of where the committee is
5 coming from when it takes positions in this case; whether on
6 the matter before Your Honor today, or in the future.

7 Ms. Yoder was a single mom of an incredible son
8 named Chris. Christ was her only child and was her entire
9 world. Chris was a happy, smart and social kid who loved
10 the outdoors, love roller blading and skate boarding.

11 When he was 14, he broke his knee and had surgery.
12 It was just an accident. It could have happened to any
13 teenager.

14 His doctors have him OxyContin for the pain and,
15 like so many others, he became addicted. Chris spent his
16 high school years battling the addiction that started with
17 that very first dose.

18 Ms. Yoder did everything she could to save her
19 son's life. That took a huge emotional and financial toll
20 on her but she never stopped fighting for Christ; no matter
21 what.

22 On April 19, 2017, DeeDee received the call that
23 so many parents of children fighting addiction dread. She
24 was in the middle of a business meeting in Paris when it
25 came. The voice at the other end of the line told her

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1 matter of factly, ma'am, there's no easy way to say this but
2 your son is deceased.

3 Chris was 21 years old. He dies of an overdose of
4 heroin laced with fentanyl.

5 DeeDee is now an ambassador for Shatter Proof, a
6 national non-profit organization dedicated to reversing the
7 addiction crisis in America.

8 There's one more person, one more mother, in the
9 courtroom today and I don't have a long speech about here
10 not because she's not as important or I don't like her as
11 much but because I didn't know she would be here when I
12 drafted this text.

13 But I would be remiss if I didn't acknowledge her.
14 She came all the way from Boston, drove four hours to be
15 here today, Ms. Kay Scarpone, she's sitting in the second
16 row from the back, the third person from the right and I
17 would just like to acknowledge her son in the record, on the
18 record. Kay lost her son, Joseph Scarpone, who was a U.S.
19 Marine. He served our country from 2007 to 2011 including a
20 tour in Afghanistan.

21 When he got back from it, he was a Marine
22 Sergeant. When he got back from Afghanistan, he was injured
23 and went to the VA where they gave him opioids.

24 Sadly, Joseph Scarpone died when he was 25 of
25 overdose and I know that Kay misses him dearly every day.

1 So that's who we are, Your Honor. We hope to
2 advocate for the individual victims in this case who have
3 suffered terribly.

4 But more importantly to make sure that no more
5 mothers go through what DeeDee and Kay went through ever
6 again.

7 Turning to the substance of our objection to the
8 Debtors' motion. I think at best at this point my time and
9 everyone's time would be most useful if instead of going
10 through the objections I provide Your Honor and the other
11 parties here with ideas on how I think the order could be
12 approved.

13 In the revised order, the Debtors have -- sorry,
14 Your Honor. I was on line for an hour.

15 In the revised order, the Debtors have put in a
16 provision that says that the ad hoc committee cannot use any
17 funds being paid by the Debtor to object to other creditors
18 in this case and I appreciate that. I think that's an
19 improvement.

20 It shows that the Debtors acknowledge that
21 notwithstanding all the good that the states have done so
22 far, both consenting and non-consenting, which I acknowledge
23 strongly. We would not be here today if not for all of the
24 hard work that the states have done. They have essentially
25 brought Perdue to its knees and before Your Honor in the

1 Bankruptcy Court which we think is a great thing, both for
2 the Debtor and for all the creditors.

3 So we say thank you to the states.

4 But it doesn't make sense for the states to be
5 able to use money from the estate to object to other
6 creditors. I think the Debtors acknowledged that when they
7 changed the order.

8 The problem is this. The way the states -- the
9 way the issues of allocation will ultimately get decided may
10 not come in the form of a formal objection. It may come in
11 the form of an allocation that the Debtor and the ad hoc
12 committee put forth in a RSA or in a plan or reorganization
13 which may not come in a formal objection.

14 So what I would propose, Your Honor, is to make
15 more clear that the money that the ad hoc committee receives
16 from the estate could be used solely in connection with
17 bringing money into the estate, getting money from the
18 Sacklers or from the other sources of recovery, continuing
19 to do what they have done so well until now.

20 And that it not be used in connection with
21 anything, a formal objection or not formal objection, that
22 can hurt the other constituents, particularly the non-state
23 victims in the allocation proceeding.

24 So that would be my primary suggestion.

25 Mr. Preis mentioned the emergency relief fund. I

1 can tell Your Honor that that is extremely important to our
2 committee who know very well the problem that this country
3 is suffering from. A 130 people die every single day from
4 overdose. That's one person, every 11 minutes. So, in the
5 time that I stood up here, one or two people have died from
6 overdoes.

7 That emergency relief fund is vital. I don't know
8 where it stands or what's going on with it. I just want to
9 say on the record that anything that Your Honor can do to
10 push the parties forward on that would be very much
11 appreciated by a lot of people in this country.

12 Those are the two things that I had, Your Honor.
13 Other than that, I'm happy to answer any questions Your
14 Honor has.

15 THE COURT: Okay. Thanks.

16 (Pause)

17 MR. MARKOWITZ: It's Scott Markowitz, Carter,
18 Klinsky and Grogan.

19 Your Honor, we represent the ad hoc committee of
20 NAS Babies. We appeared last time. We joined in the
21 objection. Some of the comments I have will be similar to
22 Mr. Neiger and it will be brief.

23 The NAS Babies are babies who were born neonatal
24 abstinence syndrome because their birth mother ingested
25 opioids during pregnancy. There's hundreds of thousands of

1 these babies around the United States in our group who
2 represents, in general, that group of babies we think are
3 claims in this case based upon both injuries and monitoring
4 continuing care. It may be among the largest unsecured
5 claims in this case.

6 I'm not going to supplement any of the legal
7 arguments. We've been here long enough. We've heard them.
8 It's fully briefed.

9 Similar to Mr. Neiger, I would like the Court to
10 understand some of our constituents. In Court today is
11 Kathleen Strain (ph). She is sitting right here. She has
12 custody of her four year old granddaughter. She has
13 recently told me a story that she -- at school, the school
14 diagnosed her son who was diagnosed with neonatal abstinence
15 syndrome when he was born. I'm sorry, granddaughter, was
16 delayed in development which these -- all these children are
17 generally delayed in development, was diagnosed that way at
18 the school and got a referral to her local hospital in
19 Berk's County, Pennsylvania, to the pediatric rehabilitation
20 portion of the hospital.

21 She recently took her granddaughter there and they
22 said you're 700 on the waiting list. We'll call you back in
23 the year 2021.

24 So we, too, are very concerned about this
25 emergency fund and it's very difficult for me, you have lay

1 people sitting here in Court and we talked a lot about
2 bankruptcy stuff today; it's very difficult for me to
3 explain to these -- my constituents why creditors like
4 states and governmental authorities who have -- ironically
5 have the financial ability to pay their own lawyers, which
6 is normally the case for unsecured -- you know, Chapter 11
7 cases. Get their lawyers fees paid in this case when this
8 money could be used, for example, so that this hospital
9 might not have a 700 person waiting list.

10 So we would really like the Court to keep that in
11 mind. We think that it sends the wrong message to really
12 the primary victims of the opioid crisis. The opioid crisis
13 victims are individuals or they're individuals represented
14 by Mr. Neiger's group or they're our group of -- we think
15 are the most innocent. These babies are born addicted to
16 opioids. They have to put baby droppers in their eyes to
17 get them off of this opioid addiction.

18 So under these circumstances, we oppose the
19 motion.

20 THE COURT: Okay.

21 MR. MARKOWITZ: Thank you.

22 (Pause)

23 MR. CAGE: Good afternoon, Your Honor.

24 Nicholas F. Cage, (indiscernible) Stevens & Lee.

25 We represent private purchasers of health insurance.

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1 I'll be brief because I think we're all -- we've
2 all heard enough today. But I just wanted to make a couple
3 points.

4 We joined in the official creditors committee's
5 objection and in our joinder we pointed out that there are
6 three over arching goals in this case and two of those goals
7 we believe are shared by all creditors. One is to maximize
8 the size of the estate, including money that could be
9 recovered from the Sacklers, from DNO Insurance or other
10 sources.

11 One is to abate the opioid crisis. But the third
12 goal is a goal where the creditors are going to be
13 diametrically opposed, i.e., inter-creditor issues; how --
14 you know, who -- which group has a claim in what amount and
15 how that stacks up against the other creditor group and an
16 over arching concern there is the so-called state, SMT
17 group, the states, municipalities and tribes versus the
18 private litigants like us and the two parties you just heard
19 from.

20 And the committee cited in its papers a report
21 that said that private litigants may be 70 percent of the
22 claims. And I was happy to hear Mr. Huebner say, earlier
23 today, that even though he has said repeatedly that 85
24 percent of the litigations were brought by SMT claimants
25 that doesn't necessarily mean that they are 85 percent of

1 the class.

2 The SMT claimants think otherwise. They say that
3 they are the overwhelming majority of the claims against
4 this estate and they say that right in their papers that
5 were filed in support of the motion.

6 I share Mr. Neiger's concern that the funds that
7 are going to be used from the estate not be used on any
8 inter-creditor issues. It's not just object to claims. But
9 one of the biggest fights in this case is going to be how
10 the value that is recovered is ultimately allocated under a
11 plan or otherwise among the various creditor groups. And
12 they should not use our money to beat us up and get a better
13 deal for their class. That's a parochial interest that they
14 have. It's not something that benefits the estate in any
15 way, shape or form.

16 So, in our view, no inter-creditor issues should
17 be compensable from the estate. We'd rather see the money
18 go to the innocent victims.

19 Thank you.

20 (Pause)

21 MR. ECKSTEIN: Your Honor, Kenneth Eckstein of
22 Kramer, Levin again.

23 I don't have a lot but I think I need to add -- I
24 did appreciate the comments that were made by Mr. Neiger and
25 some of the other objectors and the recognition by

1 Mr. Neiger that the order was clarified to make clear that
2 the scope does not include objecting to claims or litigating
3 a defense of an objection to a claim against members of the
4 ad hoc committee.

5 That said, we've always appreciated that one of
6 the critical components of getting to a confirmable plan of
7 reorganization is going to be one that is going to include a
8 resolution of allocation and we do expressly contemplate
9 that that is going to be part of our charge. I know Your
10 Honor has admonished us to begin work on that immediately
11 and we do contemplate doing that but we contemplate doing
12 that in connection with the development of an RSA and a
13 plan, which we think is the appropriate way to deal with it.
14 We do not intend to deal with it in litigation and, in fact,
15 the scope expressly excludes litigation from the scope of
16 the ad hoc committee's role in the case, at least in terms
17 of being compensated by the estate.

18 I don't know if Your Honor has any other
19 questions.

20 THE COURT: Well, I -- you know, I think there's
21 -- the issue of being compensated for work on allocation
22 issues is a complicated one I think because you can conceive
23 of a range of outcomes, many of which, most of which would
24 be ones that would warrant compensation to your group.

25 And that's why I think it wouldn't make sense

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1 simply to rule it out as was perhaps suggested separate and
2 apart from litigation.

3 On the other hand, it's the type of issue that I
4 normally would look at when someone put an RSA in front of
5 me. And as the bankruptcy lawyers here know, RSAs are --
6 it's rare that someone isn't objecting to an RSA.

7 The Court evaluates it and decides whether it
8 makes sense to approve it and in terms of dollars of cents
9 the issue is the fees.

10 So I have been considering whether just as the
11 pre-petition work is tied to the earlier of an RSA or a plan
12 any work done on allocation issues should also be tied to an
13 RSA or a plan. Not that you would apply the 503(b) standard
14 to it but you just see how it shakes out at that point, you
15 know?

16 If an RSA that proposes an allocation that
17 everyone except -- I'm not suggesting this would be the
18 case, but everyone except the private purchasers of health
19 insurance, says, yes, we'll support this. This is a good
20 path. Then I think it would be pretty clear that I would
21 approve that.

22 On the other hand, if you all are the only people
23 standing up in favor of the RSA and the 24 other states are
24 saying no and the committees say no. This is not -- this is
25 a waste of time, then I don't think that's really the type

1 that I would approve.

2 So it's clear to me that there's a real advantage
3 to the estate and all the creditors to have the states
4 focusing their energies through specific professionals,
5 working with the other constituents in the case, towards a
6 common goal, which is understanding the facts and dealing
7 with the issues that are inevitably going to arise in a
8 professional and organized way.

9 But I do understand the point about leverage and
10 there is some undue leverage if you guys are being paid to
11 push one allocation agenda in which everyone else is opposed
12 to.

13 I'm not saying that's what you're going to do.
14 So, in a way, I'm suggesting you -- maybe you all should
15 live with that type of limitation just as living with a
16 limitation on the pre-petition amounts.

17 MR. ECKSTEIN: Your Honor, I will point out that
18 while we did hear Your Honor at the first day encourage us
19 to broaden our role as much as possible and I think toward
20 the end we entered into this understanding with the
21 dissenting ad hoc committee estates as well as with the
22 municipality ad hoc group that we would share the financial
23 advisory work with them.

24 I think they were very supportive of that and
25 frankly took a lot of comfort in that because I think the

1 goal is in order to build the broadest possible consensus,
2 we think that the states and municipalities each and all
3 need to be comfortable with not only the aggregate amount
4 but how the plan is going to allocate.

5 And so I think this technique is actually very
6 much supportive of getting to an agreed upon plan and I
7 actually would hope that we can utilize that sharing as a
8 way to sort of give the Court comfort that the allocation
9 issue, which is an important issue, is going to be managed
10 in a constructive and in an efficient way.

11 And I think that the Court will have the ability
12 -- and all parties will have the ability I think to review
13 the work that's being done. And to the extent anybody
14 believes that the work is outside of the scope of getting
15 this case to a consensual resolution, people will raise
16 concerns I think at the time.

17 THE COURT: Well, this also ends if you don't have
18 an RSA.

19 MR. ECKSTEIN: That's obviously true Your Honor.
20 This can --

21 THE COURT: Right.

22 MR. ECKSTEIN: -- end and we're vulnerable to that
23 and we sort of recognize that and are living with that risk.

24 But Your Honor does appreciate that there are
25 timelines in this case that are important. One of the over

1 arching factors that motivated the consenting states and
2 municipalities to support this settlement framework and
3 ultimately a term sheet was we believe this is the most
4 effective way to put billions of dollars from the company
5 and the Sacklers into this country to deal with the problem
6 and if we can get this done along the timeline that we've
7 contemplated, we think that is really the over arching
8 benefit that everybody is trying to work towards.

9 So we actually believe, quite firmly, this is a
10 structure that is going to ultimately lead to the most
11 effective and the swiftest resolution of this case, which
12 ultimately is going to have to be embodied in a plan that's
13 going to come before Your Honor for approval and we think
14 allocation obviously is as important as the aggregate
15 dollars that have come from the different quarters.

16 So we would hope that with the protections that we
17 have given the Court and all the parties in the case
18 sufficient comfort to believe that this can be reviewed on a
19 regular basis; the monthly statements with the quarterly
20 applications. We believe we've actually gone over and above
21 in terms of what an ad hoc committee would do to try to make
22 sure that there's going to be complete transparency about
23 the role that's played.

24 THE COURT: Okay.

25 MR. ECKSTEIN: Thank you, Your Honor.

1 MR. HUEBNER: Your Honor, I'll be about four
2 minutes in total and that's -- and then I think we're done.

3 There are eight very quick things that I think
4 need to be said by Debtors and then we have nothing else.

5 Number one, for the avoidance of doubt, I think I
6 was actually quite clear and I hope I was not misunderstood.
7 What I said was that it would have been a breach of trust if
8 the Debtors had said thanks for the support. We're now
9 filing this motion. Nobody ever said if the Court did not
10 grant the motion that that would be deemed to be perfidious
11 in any way.

12 Two, there are concerns about costs and
13 duplication. We share them. I mean, that's -- you know, as
14 I said in I think point number three, every dollar that is
15 spent during this case is a dollar that is not there at the
16 end of the case. And the answers are the same.

17 We have built in a whole raft of search lights and
18 protection and judicial oversight in the amended order and
19 if people feel like the costs are not appropriate or the
20 duplication efficiency is not appropriate, I have no doubt
21 that the six other ad hoc committees or four other ad hoc
22 committees and the official committee and maybe the Debtors
23 will be objecting and this Court will decide.

24 So there's going to be a lot sunshine here.

25 Three, the Debtors are getting nothing in "return"

1 from Mr. Hurley. It's just not right and that's why I began
2 with the judicial notice point, Your Honor, and this Court's
3 ruling in Delphi. I think that the injunctions support
4 something in return. I think that the term sheet is
5 something in return.

6 I think that progressing the diligence and the
7 deal is something in return.

8 And, in fact, Your Honor, if it's necessary, it's
9 the rough Ascii, it's page 157 to 159, in the finished
10 transcript. And we've been scrambling a little bit and I
11 apologize for shuffling the papers. It's pages 164 to 166.

12 Mr. O'Connell actually testified under oath about
13 what we're getting in return including the states and their
14 advisors kind of glovering that the Sacklers never presented
15 in and getting a commitment on the spot including someone
16 getting on a plane to Asia to go unblocked diligence and get
17 information flowing. Maybe we could have done that without
18 them. Maybe we could have done it without them. I don't
19 know.

20 Again I want to be careful not to deify them, you
21 know, without the states, all that's lost because, you know,
22 frankly, there are lots of people who deserve credit for
23 things here. But there actually is sworn testimony on this
24 point in addition to all of the items on the docket so
25 far.

1 Fourth, allocation. It should not be minimized.
2 This is not a simple issue and I think what you heard Mr.
3 Eckstein say is, you know, there's allocation and there's
4 allocation. And as we're designing complicated mechanisms
5 for the best way to figure this out including at the Court's
6 constant urgings to be creative and thoughtful; that's one
7 type of allocation.

8 If it's like I get more and you get less. That's
9 a very different type of allocation and, frankly, I think
10 many people will come roaring in if they start seeing on
11 monthly bills and whatever Your Honor ends up ruling, I
12 think no one in this courtroom could fail to understand that
13 Your Honor views that as potentially being categorically
14 different than growing the pie for all, which is where we
15 are I think certainly at this particular phase of the case.

16 But we did narrow the scope after listening to the
17 objectors to be clear about what we know it's not and what
18 it's not is saying the estate should pay me to say you don't
19 have claims but I do have claims.

20 Five, I agree with Mr. Hurley. The opposing
21 states do have an important role to play and, you know,
22 whether you want to call this we have six good cops and four
23 bad cops or any sort of foolish metaphor, those aren't
24 really helpful.

25 The reality is multiple entities have a role to

1 play but the opposing states are actually supporting this
2 motion. So the very people that Mr. Hurley said maybe the
3 opposing states can do this better and advance -- and make
4 the deal yet better, they support today's relief, I think
5 because of the view that this is like a ratchet, right?

6 We get more diligence. We get more information.
7 Then some people firm up the deal we currently have and
8 other people will undoubtedly be pushing for a better deal.
9 And as we move -- you know, I said already at two hearings,
10 they'll, you know, lock and build. Lock and build. So each
11 one of these bricks puts down an edifice that ultimately is
12 designed to get more value to the people in need.

13 Nobody disagrees with the need for diligence. I'm
14 not going to repeat that.

15 With respect to 503, just to address the U.S.
16 Trustee very briefly, we don't take issue with the legal
17 principle, which I won't quote in Latin, that specific
18 provisions trump general provisions.

19 But it's just a different thing. When a creditor
20 often opposed by the debtor or others, says look backwards.
21 I did great things. Please give me unique (indiscernible)
22 being paid that's different than the debtor and others
23 looking prospectively and saying, we actually think this is
24 good use of money. So, ultimately we're down to the common
25 benefit and we will (indiscernible) agreement. And again I

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1 think our briefs are pretty clear on this and there's lots
2 and lots of RSA case law that Your Honor has already alluded
3 to. So we know that 503(b) is not statutorily specific.

4 Eight, and with this, I will close, Your Honor,
5 you know hearing even just the tiniest fragment about the
6 unthinkable pain and loss suffered by people in the
7 courtroom today, you know, mothers and parents of victims
8 and victims themselves, you know, as Perdue's "lawyer" it's
9 not very easy for me to stand up and address that.

10 So, I'll say only a couple of things. One, Davis
11 Polk arrived in March 2018 and since the day we arrived, our
12 firm and the Debtors, as opposed to whatever people will
13 ultimately figure out with respect to the past, are here to
14 do the most good for the most people with Perdue's assets as
15 expeditiously as that can be done.

16 And so ironically my first point of today is
17 actually my last point of today. The opioid crisis is
18 unthinkably horrific. It has scythed its way through our
19 country like a pharmacological grim reaper.

20 And we have a shared goal to do the best we can
21 for the most as quickly as possible; whether it's getting
22 this case out more quickly, maximizing the value of the
23 estate or the emergency fund that the Debtors -- the
24 emergency relief fund that the Debtors firmly support and
25 have to figure out the details on, that's what we're all

1 here to do.

2 This motion is not simple but for the reasons I
3 explained at length in my initial presentation, we do think
4 that especially with the modifications in the order, it is
5 -- painful as it is to talk about professional fees and not
6 saving the money for victims, ultimately we think that it
7 will get us all to more for those who need it most.

8 Thank you.

9 THE COURT: Okay. Anything else?

10 MR. PREIS: Your Honor, did you want us to address
11 your idea about not having fees paid until an RSA is signed
12 with regard --

13 THE COURT: Well, I was focusing on fees -- an
14 allocation as opposed to due diligence.

15 MR. PREIS: Yes.

16 THE COURT: You know, et cetera.

17 MR. PREIS: Did you want us to address that? I --

18 THE COURT: Well, if you have any thoughts on it.

19 MR. PREIS: Okay. So a couple of things. Again
20 because I don't want to get into settlement conversations et
21 cetera.

22 But one of the things that was absolutely
23 discussed -- you asked me earlier what other -- what
24 possibilities or what changes would we have made to the
25 order.

1 One of the things we did discuss was this
2 allocation issue and I told Mr. Huebner, we told
3 Ms. Eckstein the same thing, which is putting something in
4 the order that say you're not going to litigate about
5 allocation doesn't solve anything.

6 I think they all know. In fact, I'm going to get
7 to why that I think they kind of all know this. They all
8 know that the real issue here for the states is the
9 allocation issue which is why the first thing you said when
10 you raised the issue, Mr. Eckstein said, no, no, no. That
11 -- we can't do that. That's one of the most important
12 things we're doing because that's actually from their
13 perspective, almost as important as how much can we get for
14 the estate.

15 The second thing is from the dissenting state
16 perspective, it was kind of confusing to us why the
17 dissenting states decided to support the consenting states
18 having their fees paid when they're not getting paid.

19 And then it dawned on us, what's the common
20 interest they have? And then we saw in the order, right,
21 FTIs, FTIs' work product only gets shared to the extent
22 there's a common interest. Well, what's their common
23 interest? Allocation.

24 And so the one thing that they're so focused on is
25 allocation. And so if you were to say to them, no. You

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1 actually can't get those fees paid until an RSA is signed
2 and then I'll make a decision at the time of the RSA, that
3 actually puts pressure on them to come to a reasonable
4 allocation as opposed to using -- as opposed to basically
5 weaponizing the fees of the estate to be used against
6 everybody else.

7 I think -- I just want to make sure that's --

8 THE COURT: That rederick's a little inflammatory.
9 I -- you know, these are 48 states.

10 (Laughter)

11 THE COURT: They have responsibilities to their
12 people and to the people that elect their government.

13 So I don't really view it as weaponizing. But I
14 understand that when you're looking at the benefit for the
15 money spent, you want to have a benefit that is actually
16 reflected in as much achievement as you can. So that's what
17 led me to suggest that as opposed to I think a strong
18 concern that the states, in fact, would do something that
19 literally made no sense and would probably get their
20 attorney generals perhaps having another job after the next
21 election.

22 So -- all right. Having you been defended by Your
23 Honor -- by me, I don't know if you have anything more to
24 say on that.

25 MR. HUEBNER: Your Honor, we rest on our papers.

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1 THE COURT: Okay. Thank you.

2 (Laughter)

3 MR. HUEBNER: That's the only time in my life my
4 argument has been shorter than my opponents.

5 (Laughter.)

6 THE COURT: All right. All right.

7 I have before me a motion by the Debtors for
8 either approval of their entry into or the approval of the
9 assumption of any fee reimbursement letter, a copy of which
10 is attached to the motion whereby they would agree to have
11 the estate pay the reasonable fees and expenses of certain
12 designated professionals for the loop of plaintiffs who pre-
13 bankruptcy had agreed to a settlement framework with the
14 Debtors. That has now been embodied in a term sheet.

15 The agreement has been modified as reflected in
16 the proposed order submitted to chambers late last week and
17 discussed on the record today and provided to the parties.
18 But the basic concept is the same which is that the work
19 that the four designated law firms and currently one
20 designated financial advisor would be doing during the
21 course of this case, not subject to strong rights of the
22 Debtors to terminate the agreement, however, would be paid.

23 Because the Debtors are in bankruptcy such a
24 proposal needs to be put forth and subject to notice of a
25 hearing and the agreement has received a number of

1 objections as well as support from the other large group of
2 states who have not yet agreed to a settlement framework in
3 this case but are, in certain respects, working with the ad
4 hoc committee that has reached a settlement framework.

5 The first issue for me to consider is whether the
6 rubric under which the Debtors are seeking approval of the
7 reimbursement agreement is permissible.

8 The United States Trustee has taken the position
9 that because fees are at issue and obviously these are not
10 the fees and expenses of professionals to be compensated
11 under Section 330 and 331 of the Code, and that they're not
12 retained under Section 327 or 1104 of the Code, that the
13 only source for the authority to pay such fees and expenses
14 appears in Section 503(b) of the Bankruptcy Code and
15 specifically 503(b)(3) or (4) of the Code.

16 The Debtors, on the other hand, contend that I
17 have the separate power to approve their motion as the
18 assumption of a contract under Section 365 of the Code or
19 for a proposed use of the estate's assets, in this case
20 cash, under Section 363(b) of the Bankruptcy Code.

21 Other courts have addressed this issue before.
22 The U.S. Trustee relies heavily, perhaps, you know, almost
23 exclusively on *In Re. Lehman Brothers Holdings, Inc, David*
24 *V. Elliott Management Corp.* 508 Br. 283 SDNY 2014, in which
25 the district court reversed the Bankruptcy Court on a

1 reserved issue that was reserved at the time of the
2 confirmation of the Lehman Brothers Chapter 11 plan.

3 That issue was whether the plan itself could
4 provide for the payment of previously incurred fees and
5 expenses of committee -- creditors' committee members,
6 including their counsel, under a standard separate and apart
7 from Section 503(3) of the Bankruptcy Code. For example,
8 under Section 1129(a)(4) of the Bankruptcy Code.

9 In that case, Judge Sullivan concluded that 503(b)
10 was the only source for paying such a claim and that
11 Congress had specifically deleted the types of fees for
12 committee members from the statute and therefore found that
13 that provision of the plan could not stand.

14 On the other hand, the issue was directly raised
15 on a case that I believe is much more on point in In Re.
16 Bethlehem Steel Corp., 2003 WL 217, 38964, SDNY July 23,
17 2003, in which District Judge Mukasey overruled an objection
18 by the U.S. Trustee made on essentially the same basis as
19 the objection before me and affirmed Bankruptcy Judge
20 Lifland's approval of the Debtors' payment of the ongoing
21 fees and expenses of the United Steelworkers of America
22 Captain, and subject to review, as set forth in that
23 agreement.

24 This was an unsecured -- this was a creditor that
25 held an unsecured claim. It clearly was not being retained

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1 under Section 327 or 1104 and was not seeking payment under
2 503(b). Nevertheless, in a thoughtful opinion, Judge
3 Mukasey affirmed Judge Lifland, in concluding that under
4 Section 363(b) the payment was warranted and not precluded
5 by Section 503 of the Bankruptcy Code.

6 The Court noted that these were for ongoing work.
7 These fees would be paid for ongoing work as opposed to for
8 past work and that the motion was made by the debtor as
9 opposed to by a creditor.

10 The Court further said that subsections
11 503(b)(3)(d) and (b)(4) are not rendered meaningless simply
12 because a certain unique -- in certain unique circumstances
13 the bankruptcy court approves a debtor's motion to enter
14 into an agreement to reimburse a creditor for professional
15 fees.

16 In most cases, a debtor will make no such motion
17 as it will not be in its business interest to do so or the
18 Court will refuse approval under Section 363(b). That's in
19 most cases if the creditor wants to be reimbursed, it must
20 file an application under subsections 503(b)(3)(d) and
21 (b)(4).

22 Those provisions continue to serve a purpose, a
23 separate purpose.

24 I agree with that analysis and will note that just
25 as Judge Mukasey and Judge Lifland noted in Bethlehem Steel,

1 there are a number of cases under the Bankruptcy Code are
2 fact patterns under the Bankruptcy Code where Courts have
3 approved payments of ongoing fees and expenses not under
4 Section 503(b) but under Section 363(b) or sometimes under
5 Section 365.

6 The most common is in connection with the debtor's
7 request for approval or a restructuring support agreement
8 that has garnered the support of some but not all of the
9 debtor's creditors. Often those agreements are with secured
10 creditors but it's not clear whether they are over secured
11 and therefore would have a right to attorney's fee. But
12 they are also in the past have been with unsecured
13 creditors.

14 As Judge Mukasey noted, Courts have also approved
15 paying reasonable fees and expenses of -- including legal
16 fees of proposed bidders for the debtor's assets under
17 Section 363 notwithstanding the potential applicability of
18 503. In fact, the Third Circuit made a distinction in the
19 Applied Energy case discussed in Bethlehem Steel where there
20 was no advance approval of such a request. The debtor
21 didn't seek approval until thereafter and the disappointed
22 bidder made its request, it had to make it under Section 503
23 and it was reviewed under 503.

24 But obviously the facts of the case are
25 distinguishable from countless cases where courts have

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1 approved at the debtor's request the payment of fees and
2 expenses as part of (indiscernible) procedures.

3 Also courts have approved the fees and expenses of
4 secured creditors in the case fairly routinely in cash
5 collateral orders even where there's no showing that the
6 debtors -- that the collateral serving for the secured
7 creditor is sufficient to cover not only the debt but also
8 the fees and therefore the secured creditor would be
9 entitled to the fees. And there's no showing of the need to
10 pay them as part of adequate protection.

11 Nevertheless, they're paid because of the role
12 that the secured creditor is playing in the case.

13 So I conclude that the proper standard to review
14 this motion under is, in fact, the standard applicable which
15 I believe is applicable to both sections, 363(b) and Section
16 365 of the Bankruptcy Code.

17 I will note that there is case law that --
18 including in this District declines to approve the
19 assumption of an agreement under Section 365 that provides
20 for the payment of the debtor's attorney fees. See In Re.
21 Financial News Network, Inc., 134 Br. 732 Br. SDNY 1991,
22 which was a clear runaround the requirements of Section 330
23 and 331 of the Bankruptcy Code.

24 But, ultimately whether I'm applying 365 or 363(b)
25 here, I believe it's the same standard for me to apply which

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1 is whether the entry into the agreement and the performance
2 of it including the ongoing payment of the professional fees
3 is a proper exercise of business judgement and in the best
4 interest of the debtors and their estates and creditors.

5 The case law as to the determination of what is a
6 proper exercise of business judgment is I believe fairly
7 clear in the Second Circuit and it is clear that
8 notwithstanding the Integrated Resources case often cited by
9 debtors in Section 363(b) motions, the Second Circuit has
10 made it clear since that case that ultimately the bankruptcy
11 judge has to make the decision as to whether the debtor has
12 exercised proper business judgment in taking the action out
13 of the ordinary course and/or assuming a pre-petition
14 contract under Section 365. See *In Re. Orion Pictures*
15 Corp., 4 F.3d, 1095, 1099, Second Circuit 1993.

16 Most of the time most actions out of the ordinary
17 course are unopposed. If that's the case, the court
18 ordinarily will defer to the debtor's judgment in entering
19 into the agreement. Although, even then, the court has an
20 obligation to make sure that that judgment makes sense. See
21 *In Re. Genco Shipping & Trading Ltd*, 509 Br. 455, 463, Br.
22 SDNY 2014.

23 But I believe clearly given the fact that Congress
24 requires both under 363(b) and 365 of the Bankruptcy Code,
25 notice of the opportunity for a hearing that where there are

1 objections in particular, the Court needs to carefully weigh
2 all the opposing views as well as the views stated in
3 support of the motion to determine, in its judgment, whether
4 the decision is a good one or not.

5 The fact is that often in bankruptcy cases as much
6 as the code and courts urge parties in interest to work
7 together to a common goal, there are different points of
8 view that are almost structurally required and ultimately
9 that is why I believe Congress made the Court the final
10 arbiter as to what makes good business sense for something
11 like this.

12 Given my review of the motion and the supporting
13 papers, as well as the objections to the motion, as well as
14 oral argument today, it's first clear to me that the facts
15 are largely undisputed.

16 The Debtors' cases are highly unusual. It may be
17 there are more like them in the future. But the Debtors are
18 largely in a sua generis position whereby they have already
19 agreed to turn over all of their value to their creditors.

20 The question is whether that agreement should be
21 augmented by a specific set of terms basically agreed with
22 the ad hoc consenting group or whether additional terms can
23 be agreed to that pertain to third parties of the Debtors'
24 shareholders and further and as equally important how the
25 resulting estate should be distributed to the creditors.

1 The unusual perhaps unique issue in these cases is
2 that there is a distinct possibility that the allocation
3 issues could either be dealt with in an efficient and fair
4 way that's respectful of the various parties-in-interest in
5 this case or the parties can spend an inordinate amount of
6 time disputing them to all their detriment.

7 One would think if you sit in bankruptcy court
8 every day, as I do, that that issue also is common to
9 bankruptcy cases. And, as I just articulated, it is. What
10 is different here, however, is that this is a fundamentally
11 public health crisis driven case where the claimants, in one
12 sense, can be almost every citizen in the country. That is
13 why every state, except the two states that have already
14 settled with these Debtors, has taken a highly active role
15 not only in this case but in the litigation that preceded
16 this case in federal and state court.

17 Thus deciding how the public at large is to
18 benefit from the agreement that the Debtors have already
19 made and a potential agreement from their shareholders is
20 truly unusual.

21 It appears clear to me that we would not be in
22 this place but for the work done by the states in general
23 and that has been acknowledged by those who have objected to
24 this motion as well as the Debtors.

25 It's also clear to me that the states have a

1 unique role in these cases because of their unique position.
2 First of all, they are the sovereign state governments of
3 the 48 states involved.

4 Secondly, because of that, they have unique
5 rights under the Bankruptcy Code. Those rights can be
6 tested in a wasteful way or they can be reserved for a
7 future day if the states are satisfied that the process is
8 proceeding in a way that is credible and acceptable to them.

9 At this point in the case, the latter, to my
10 relief, appears to be the approach that the states have
11 taken. Not only the ad hoc group of so-called settling
12 states but also the ad hoc group of non-settling states.

13 But those types of issues I believe need to be
14 dealt with sensitively throughout these cases. I think it's
15 correct that the Debtors recognize the unique role that the
16 states have played and will continue to play in these cases.
17 And, frankly, I believe that such recognition is in the best
18 interests of all of the Debtors' creditors.

19 It is clear to me from today's record that the
20 states need to perform their own analysis, their own due
21 diligence, and be heavily involved in the rest of these
22 cases as they have been so far.

23 While it appears to me that we are quite fortunate
24 in this case to have an active and well represented official
25 committee of unsecured creditors, the states' interests are,

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1 as I said before, unique and require unique steps to insure
2 that they are dealt with in a sensitive and an appropriate
3 way.

4 I believe it is reasonable for them to want to
5 perform their own due diligence, do their own analysis, and
6 it is in the interests of the Debtors' estates and creditors
7 that they do so in an efficient and organized way which
8 means focusing their work through point counsel and point
9 decision makers who then develop transparent ways to
10 communicate to their colleagues.

11 The question is is it necessary, or at least a
12 good business decision, to pay for that work at this time as
13 the motion proposes.

14 That is not an easy question to answer as
15 evidenced by the well argued objections under Section 363
16 while applying Section 363(b)'s standard and it's my job to
17 sift through whether this expenditure of that money just in
18 terms of sheer dollar amount as well as any affect that that
19 expenditure would have on these cases is a proper exercise
20 of business judgment.

21 Any dollar that the Debtor can spend to solve the
22 health crisis that is the reason for its case one would
23 believe is a dollar well spent. So taking any dollar away
24 from that is a difficult decision to make.

25 However, it is also the case that because of the

1 context of this case and the difficult issues it raises,
2 dollars will need to be spent to resolve those issues in an
3 efficient and fair way. The Debtor just can't put a chest
4 of money out on the street and say come and get it.

5 Instead, the parties-in-interest need to approach
6 the problems that this case presents in a very thoughtful
7 and creative way. That takes times and it takes money.

8 The creditors committee and its allies in
9 connection with the objection to this motion takes the view
10 that this -- the expenditure of any money here is premature
11 because we are not yet at the stage where -- let alone there
12 is a plan but there's not even a restructuring support
13 agreement.

14 It also notes that the cost of this motion could
15 be high although I take issue necessarily with the view that
16 it would be 15 to 20 million dollars because that is a cost
17 spread over several months and the Debtor has the right, at
18 any time, to opt out of this agreement and the agreement, in
19 any event, unless extended, ends, if there is no RSA, by, in
20 essence, a month or so from now.

21 So I view the issue about whether this relief is
22 premature a little differently. It seems to me that with
23 the limitations imposed by the changes to the proposed
24 order, the work that would be compensated here would be
25 appropriately compensated and be to the benefit of all the

1 parties in this case. As far as the analyses of the Debtors
2 and their business, which includes difficult analyses about
3 not only their -- the value of those businesses but also how
4 to monetizes them including non-debtor entities and also due
5 diligence and work in connection with analyses of causes of
6 action that the Debtors have that may well be equal to or
7 greater than the value of their hard assets and their
8 businesses.

9 I believe that's what is now appropriately
10 compensated under this revised agreement.

11 The committee has argued that that work will be
12 done anyway if I don't approve this agreement and it is
13 possible that some portion of it will be. However, as I
14 said during oral argument, this motion is as much, if not
15 more, about bringing structure to this case as it is about
16 the actual hard dollars spent on paying for the work to be
17 done.

18 I believe without such a structure, i.e., where
19 there are clear lines of communication and clearly defined
20 roles for the professionals for the ad hoc group, there
21 would be a substantial risk that the trust, based on
22 assessments of the Debtors' credibility, that has been
23 generated over the last three months or so, would be frayed
24 and potentially lead to what I believe would be a major step
25 back in this case which is or which would be various states

1 and the PEC group feeling that they were on their own and
2 taking therefore diverse and unorganized positions.

3 Besides the due diligence, the next major step in
4 this case, which I've already, and I know I sound like a
5 broken record, but I've said it two or three times now,
6 needs to be focused is creative thinking about the
7 allocation of the Debtors' assets.

8 I continue to believe that the states play a major
9 role in that process. The role I'm envisioning for them is
10 not one where they say we get everything. I think that
11 should be clear and I think it is clear to them.

12 But, rather, where they act as -- in the best
13 principles of federalism, for their state, the coordinator
14 for the victims in their state.

15 Thus, I would expect the people from Mr. Neiger's
16 group, for example, to be working with the states closely to
17 maximize benefits because it appears to me from his
18 description of his group that they're not so much focusing
19 on individual claims as a way to deal with a whole host of
20 individuals.

21 And there may be very good ways to do that in a
22 particular state and less good ways in another state and I
23 hope that the states will act as a way to coordinate that
24 type review.

25 There is a legitimate concern that those hopes

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1 will not be fulfilled. I don't think that will be the case.
2 I think the states appreciate that this money needs to go
3 where it is most in need of going and that we don't repeat
4 the experience of some states from the tobacco settlements,
5 for example.

6 But because of that concern, even though I believe
7 it is not the likely outcome in this case, I think that
8 there should be two additional conditions on certain of the
9 work reimbursement.

10 First, I believe work done on this critical issue
11 of allocation should, like the pre-petition work covered by
12 the agreement now, be payable upon the earlier of the
13 Court's approval of an RSA or confirmation of a plan.

14 For those of you who are not bankruptcy lawyers
15 that doesn't mean that I'm disapproving it. Rather, I would
16 look at the time that an RSA is proposed and see whether it,
17 in fact, makes good business sense and that may not mean
18 that it has to be universally accepted but that it is a
19 focal point for moving the case to the next step.

20 I want to be clear that what I'm conditioning on
21 the approval of an RSA is not all of the work but just work
22 on the allocation issue and, knowing the professionals
23 involved, I know they know how to bill by separate tasks to
24 cover that.

25 Secondly, I believe that that RSA needs to have

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1 within it, if not -- and I'm not ruling out anything before
2 then, but it needs to have within it a valid and credible
3 proposal for the emergency use before confirmation of a
4 plan, of a substantial amount of the Debtors' cash because I
5 do think it is important for the parties-in-interest to be
6 focusing on that use now.

7 I appreciate that those two conditions put the ad
8 hoc group at some risk for some portion of the fees at issue
9 here. On the other hand, I believe that that risk to them
10 is minimal given how they've conducted themselves so far in
11 this case and my belief that past is prologue, i.e., that
12 they will continue to be constructive; continue to try to
13 achieve consensus and, most importantly, consistent with
14 their roles as representatives of individual states as well
15 as the plaintiffs who have -- who brought the pre-petition
16 litigation, that brought us to where we are today, will see
17 the need to continue to contribute in these cases in a way
18 that brings the parties together in an efficient and fair
19 way.

20 So, with the changes that had previously been
21 agreed to, all of which I believe were well considered and
22 warranted, I will approve the motion with those two
23 additions.

24 MR. HUEBNER: Your Honor, I would never agree to
25 leave a hearing with the Court having a potential factual

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1 mis-impression. So there is one small thing you said that I
2 actually don't think is --

3 THE COURT: The date for the RSA?

4 MR. HUEBNER: Correct. Let me explain because
5 it's actually three different documents have to actually all
6 be tracked to understand it. In fact, everyone needs to
7 understand it and certainly the Court most of all.

8 The September 15th fee letter contains a
9 termination right for the Debtors if an RSA is not executed
10 by the parties by December 13th, 2019, unless extended by
11 the company.

12 THE COURT: Right.

13 MR. HUEBNER: So we have -- originally we were
14 trying to pace them to a fast schedule and we had a
15 termination right unless we chose to extend it.

16 THE COURT: Right.

17 MR. HUEBNER: Then on October 11, that I'm pretty
18 sure I won't misspeak, because I actually have it in my
19 speech in a footnote in case it came up, the UCC stipulation
20 that we agreed to we discussed earlier today obligates us
21 not to get approval for an RSA unless the UCC consents to it
22 before April 8th, 2020. The exact words for the avoidance
23 of doubt.

24 The Debtors agree that during the initial stay
25 period they will not, one, file a Chapter 11 plan, or

1 disclosure statements for any of the Debtors or, two, a
2 motion seeking approval of a restructuring support agreement
3 or a similar agreement with any party, in each case, absent
4 the support of the UCC. So, that's two.

5 Then three is the term sheet with the ad hoc group
6 that was entered into three days before. That gives them a
7 right to seek to terminate the stay if we do not have an RSA
8 approved by (indiscernible).

9 So just -- unless I misheard --

10 THE COURT: But you still have the right to
11 terminate it December 13th.

12 MR. HUEBNER: A hundred percent, Your Honor. My
13 only point is you -- I believe you said, and forgive me if I
14 misheard, although I don't think that I did, this may all be
15 resolved in a month anyway.

16 THE COURT: Well, if the people aren't working
17 the way they're supposed to, you can terminate it.

18 MR. HUEBNER: Yes. My only point is we would be
19 violating our stip with the UCC.

20 THE COURT: To file something.

21 MR. HUEBNER: To --

22 THE COURT: I understand that.

23 MR. HUEBNER: -- move for approval which we have
24 no plans to do.

25 THE COURT: I understand that.

1 MR. HUEBNER: I apologize if I thought any one --
2 no one anything they don't already know but I just thought
3 that the interplay of the documents is not simple.

4 THE COURT: Right.

5 MR. HUEBNER: And I want -- I wanted to be clear
6 for myself.

7 THE COURT: But you do have a reality check. You
8 see --

9 MR. HUEBNER: Every morning.

10 THE COURT: -- that this is -- well. But -- but I
11 mean you can --

12 MR. HUEBNER: No, no. That's not humor at all.

13 THE COURT: No. But you can literally opt out --

14 MR. HUEBNER: Every morning.

15 THE COURT: -- in a month.

16 MR. HUEBNER: Or a week. Or two weeks or three.

17 THE COURT: Although I doubt you would do that.

18 MR. HUEBNER: I think that's probably --

19 THE COURT: So I guess the one aspect that I
20 should clarify is that the emergency fund point is like an
21 outside for the term sheet that I said because that would be
22 an April.

23 MR. HUEBNER: After April frankly.

24 THE COURT: Hopefully people will focus on that
25 before then, too.

1 MR. HUEBNER: Yeah. Your Honor, you know, if
2 (indiscernible) and it's aftermath taught anybody wise
3 anything, it's that when Judge Drain expresses his views
4 very clearly several times in open court, it probably makes
5 sense to listen.

6 I'm pretty confident that parties understand
7 exactly what the Court believes is the right set of things
8 to do in the coming weeks.

9 The Debtors I believe certainly do and we'll be
10 back to the table as soon as we leave the courtroom.

11 THE COURT: All right. So you're going to have to
12 obviously revise the order somewhat.

13 MR. HUEBNER: Yes. And will settle it obviously
14 with the objectors.

15 THE COURT: Well, you don't have to formally
16 settle it but you should circulate it.

17 MR. HUEBNER: That's what I meant. Yes.

18 THE COURT: Okay. All right. Very good. Thank
19 you.

20 (Whereupon, the proceedings were concluded at 2:24
21 p.m.)

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5	Motion of Debtors for Entry of an Order	
6	(I) Authorizing the Rejection of Commercial Lease	
7	and (II) Granting Related Relief filed by Eli J.	
8	Vonnegut on behalf of Purdue Pharma L.P. (ECF 435)	19
9		
10	Motion of Debtors for Authority to Employ	
11	Professionals Used in the Ordinary Course of Business	
12	Nunc Pro Tune to the Petition Date filed by Eli J.	
13	Vonnegut on behalf of Purdue Pharma L.P. (ECF 128)	21
14		
15	Debtors' Motion Establishing Procedures for Interim	
16	Compensation and Reimbursement of Expenses for Retained	
17	Professionals filed by Eli J. Vonnegut on behalf of	
18	Purdue Pharma L.P. (ECF 434)	22
19		
20	Application of Debtors for Authority to Retain and	
21	Employ Dechert LLP as Special Counsel to the Debtors	
22	Nunc Pro Tune to the Petition Date filed by Eli J.	
23	Vonnegut on behalf of Purdue Pharma L.P. (ECF 424)	25
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5 Application of Debtors for Authority to Retain and
6 Employ King & Spalding LLP as Special Counsel to the
7 Debtors Nunc Pro Tune to the Petition Date filed by
8 Eli J. Vonnegut on behalf of Purdue Pharma L.P.
9 (ECF 427) 25
10
11 Debtors' Application for Authority to Retain and
12 Employ AlixPartners, LLP as Financial Advisor Nunc
13 Pro Tune to the Petition Date filed by Eli J.
14 Vonnegut on behalf of Purdue Pharma L.P. (ECF 429) 27
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16 Debtors' Application for an Order Authorizing
17 Employment and Retention of Prime Clerk LLC as
18 Administrative Advisor Nunc Pro Tune to the
19 Petition Date filed by Eli J. Vonnegut on behalf of
20 Purdue Pharma L.P. (ECF 439) 27
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5 Application of the Official Committee of Unsecured
6 Creditors of Purdue Pharma L.P., et al. to Retain and
7 Employ Akin Gump Strauss Hauer & Feld LLP as Counsel,
8 Nunc Pro Tune to September 26, 2019 filed by Ira S.
9 Dizengoff on behalf of The Official Committee of
10 Unsecured Creditors of Purdue Pharma L.P., et al.
11 (ECF 421) 25

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13 Application of the Official Committee of Unsecured
14 Creditors for Entry of an Order Authorizing Retention
15 and Employment of Bayard, P.A. as Efficiency Counsel
16 to the Official Committee of Unsecured Creditors,
17 Nunc Pro Tune to September 29, 2019 filed by Ira S.
18 Dizengoff on behalf of The Official Committee of
19 Unsecured Creditors of Purdue Pharma L.P., et al.
20 (ECF 422) 25

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5 Application of the Official Committee of Unsecured
6 Creditors of Purdue Pharma L.P., et al. to Retain and
7 Employ Province, Inc. as Financial Advisor Nunc Pro
8 Tunc to October 1, 2019 filed by Ira S. Dizengoff on
9 behalf of The Official Committee of Unsecured Creditors
10 of Purdue Pharma L.P., et al. (ECF 423) 27

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12 Application for Order Authorizing Employment and
13 Retention of Jefferies LLC as Investment Banker to
14 the Official Committee of Unsecured Creditors Nunc Pro
15 Tunc to October 4, 2019 filed by Ira S. Dizengoff on
16 behalf of The Official Committee of Unsecured Creditors
17 of Purdue Pharma L.R., et al. (ECF 425) 27

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19 Application of the Official Committee of Unsecured
20 Creditors of Purdue Pharma L.P., et al. to Retain and
21 Employ Kurtzman Carson Consultants LLC as Information
22 Agent, Nunc Pro Tune to November 1, 2019 filed by Ira S.
23 Dizengoff on behalf of The Official Committee of
24 Unsecured Creditors of Purdue Pharma L.R., et al.
25 (ECF 426) 27

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5 Motion of the Official Committee of Unsecured
6 Creditors of Purdue Pharma L.R, et al. for Entry of
7 an Order Clarifying the Requirement to Provide Access
8 to Confidential or Privileged Information and Approving
9 a Protocol Regarding Creditor Requests for Information
10 filed by Ira S. Dizengoff on behalf of The Official
11 Committee of Unsecured Creditors of Purdue Pharma
12 L.R, et al. (ECF 415) 28

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14 Motion of Debtors for Entry of Interim and Final
15 Orders Authorizing (I) Debtors to Continue to Use
16 Existing Cash Management Systems and Maintain Existing
17 Bank Accounts and Business Forms and (II) Financial
18 Institutions to Honor and Process Related Checks and
19 Transfers filed by Eli J. Vonnegut on behalf of Purdue
20 Pharma L.R (ECF 5) 51

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22 Application of Debtors for Authority to Employ and
23 Retain Davis Polk & Wardwell LLP as Attorneys for the
24 Debtors Nunc Pro Tunc to the Petition Date filed by Eli
25 J. Vonnegut on behalf of Purdue Pharma L.R (ECF 419) 38

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6	Employ Skadden, Arps, Slate, Meagher & Flom LLP as	
7	Special Counsel to the Debtors Nunc Pro Tunc to the	
8	Petition Date filed by Eli J. Vonnegut on behalf of	
9	Purdue Pharma L.R (ECF 438)	38
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11	Application of Debtors for Authority to Retain and	
12	Employ Wilmer Cutler Pickering Hale and Dorr LLP as	
13	Special Counsel to the Debtors Nunc Pro Tunc to the	
14	Petition Date filed by Eli J. Vonnegut on behalf of	
15	Purdue Pharma L.R (ECF 427)	38
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17	Motion to Assume the Prepetition Reimbursement	
18	Agreement with Ad Hoc Committee, and to Pay the Fees	
19	and Expenses of the Ad Hoc Committee's Professionals	
20	filed by Eli J. Vonnegut on behalf of Purdue Pharma	
21	L.P. (ECF 394)	167
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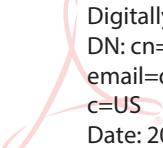
C E R T I F I C A T I O N

2

3 We, Sherri L. Breach & Penny Skaw, certify that the
4 foregoing transcript is a true and accurate record of the
5 proceedings.

6

Sherri L
Breach

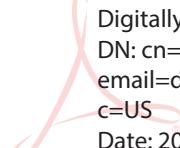
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Sherri L. Breach, Approved Transcriptionist

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Skaw

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